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94th Congress
2d Session

COMMITTEE PRINT

# BUSINESS MEETINGS

ON

# PACKERS AND STOCKYARDS ACT OF 1921, AS AMENDED

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H.R. 8410

February 6 and 19, and March 30 and 31, 1976

Public Law 94–410

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COMMITTEE ON AGRICULTURE

U.S. HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

SECOND SESSION

DECEMBER 1976

Printed for the use of the Committee on Agriculture

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# PACKERS AND STOCKYARDS ACT OF 1921, AS AMENDED

**FRIDAY, FEBRUARY 6, 1976**

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON LIVESTOCK AND GRAINS OF THE
COMMITTEE ON AGRICULTURE,
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10 a.m., in room 1301, Longworth House Office Building, Hon. W. R. Poage, (chairman of the subcommittee) presiding.

Present: Representatives Poage, Melcher, Hightower, Bedell, English, Nolan, Thornton, Sebelius, Findley, and Thone.

Staff present: Robert M. Bor and Hyde H. Murray, counsels; William A. Imhof and John E. Hogan, associate counsels; John Baize and Alan Gray, staff consultants, Subcommittee on Livestock and Grains; Leon Geyer, staff consultant, Subcommittee on Domestic Marketing and Consumer Relations; Glenda Temple, staff assistant.

Mr. POAGE. The committee will please come to order.

The Chair notes that a quorum is not present.

Of course, any member may make a point of order at any time that a quorum is not present.

I believe we had better proceed unless someone wants to make a point of order.

We have been trying for some months to arrive at legislation that would give protection to the sellers of livestock. This is for packers in regulated markets. We have had legislation introduced.

We have had a good many suggestions. Finally, we have come up with Committee Print No. 2. Hopefully, it contains some of these things that have been suggested.

(The bill H.R. 8410, as introduced, and Committee Print No. 2 follows:)

94TH CONGRESS
1ST SESSION

# H. R. 8410

IN THE HOUSE OF REPRESENTATIVES

JULY 8, 1975

Mr. THONE (for himself and Mr. BERGLAND) introduced the following bill; which was referred to the Committee on Agriculture

# A BILL

To amend the Packers and Stockyards Act of 1921, as amended, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the proviso in the paragraph designated "Packers and Stockyards Act," under the heading "MARKETING SERVICE," in the Act of July 12, 1943 (57 Stat. 422; 7 U.S.C. 204), is amended by striking out "market agency and dealer" and inserting in lieu thereof "market agency (as defined in title III of the Act), every packer (as defined in title II of the Act) in connection with its livestock purchasing operations, and every other person operating as a dealer (as defined in title III of the Act)".

SEC. 2. Section 201 of said Packers and Stockyards Act (7 U.S.C. 191) is amended to read:

"SEC. 201. When used in this Act the term 'packer' means any person engaged in the business (a) of buying or otherwise acquiring in commerce livestock or poultry for purposes of slaughter, or (b) of manufacturing, processing, or preparing in any manner meats, meat food products, or edible poultry products, for sale or shipment in commerce, or (c) of buying or otherwise acquiring or selling or otherwise marketing meats, meat food products, livestock products in unmanufactured form, poultry, or poultry products, in commerce, on a commission basis or otherwise, either on his own account or as the employee or agent of the vendor or purchaser: *Provided, however,* That nothing in this section shall affect the jurisdiction of the Federal Trade Commission with respect to retail sales of meat, meat food products, livestock products in unmanufactured form, or poultry products as provided in section 406 of this Act.".

SEC. 3. Sections 202 and 312 (a) of said Packers and Stockyards Act (7 U.S.C. 192 and 213 (a)) are amended by deleting the phrase "in commerce" wherever it appears in said sections, and by deleting the commas immediately before and following the phrase "in commerce" in sections 202 (b) and 312 (a) of said Act (7 U.S.C. 192 (b) and 213 (a)).

SEC. 4. That the proviso in the paragraph designated "Packers and Stockyards Act" under the heading "MARKETING SERVICE" in the Act of July 12, 1943 (57 Stat. 422; 7 U.S.C. 204), is further amended by adding at the end thereof a new sentence as follows: "If the Secretary finds any packer is insolvent, he may after notice and hearing issue an order under the provisions of section 203 requiring such packer to cease and desist from purchasing livestock or poultry while insolvent, or while insolvent except under such conditions as the Secretary may prescribe to effectuate the purposes of the Act.".

SEC. 5. Said Packers and Stockyards Act is further amended by redesignating section 408 as section 411 and by adding to the Act a new section 408 to read as follows:

"SEC. 408. Whenever the Secretary has reason to believe that any person subject to this Act, (a) with respect to any transaction subject to the Act, has failed to pay or is unable to pay for livestock, meats, meat food products, livestock products in unmanufactured form, poultry, or poultry products, or has failed to remit to the person entitled thereto the net proceeds from the sale of any such commodity sold on a commission basis; or (b) has operated while insolvent or in violation of the Act in a manner which may reasonably be expected to cause irreparable damage to another person; or (c) does not have the required bond,

and that it would be in the public interest to enjoin such person from operating subject to this Act or enjoin him from operating subject to this Act except under such conditions as would protect vendors or consignors of such commodities or other affected persons, until complaint under this Act is issued and dismissed by the Secretary or until order to cease and desist made thereon by the Secretary has become final and effective within the meaning of this Act or is set aside on appellate review of the Secretary's order, the Secretary may notify the Attorney General, who may apply to the United States district court for the district in which such person has his principal place of business or in which he resides for a temporary injunction or restraining order. When needed to effectuate the purposes of this section, the court shall, upon a proper showing, issue a temporary injunction or restraining order, without bond. Attorneys employed by the Secretary of Agriculture may, with the approval of the Attorney General, appear in the United States district court representing the Secretary in any action seeking such a temporary restraining order or injunction.".

SEC. 6. Subsection 308 (a) of said Packers and Stockyards Act (7 U.S.C. 209 (a)) is amended to read:

"(a) If any person subject to any of the provisions of this Act violates, with respect to matters relating to livestock or poultry, any of the provisions of this Act or of any

order of the Secretary made under this Act, he shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of such violation.".

SEC. 7. Section 309 of said Packers and Stockyards Act (7 U.S.C. 210) is amended as follows:

(a) By changing the first sentence in subsection (a) to read: "Any person complaining of anything done or omitted to be done, with respect to matters relating to livestock or poultry, by any person subject to this Act (hereinafter in this section referred to as the 'defendant') in violation of any of the provisions of this Act or of an order of the Secretary made under this Act, may, at any time within one hundred and twenty days after the cause of action accrues, apply to the Secretary by complaint which shall briefly state the facts, whereupon if the Secretary has reasonable grounds for believing that the defendant has violated the Act or an order of the Secretary made under the Act, a copy of the complaint thus made shall be forwarded by the Secretary to the defendant, who shall be called upon to satisfy the complaint, or to answer it in writing, within a reasonable time to be specified by the Secretary.";

(b) By substituting a colon for the period at the end of subsection (e) and adding thereafter the following proviso: *Provided,* That in complaints wherein the amount

claimed as damages does not exceed the sum of $3,000 an oral hearing need not be held and proof in support of the complaint and in support of the defendant's answer may be supplied in the form of depositions or verified statements of fact unless the Secretary directs that an oral hearing be held."; and

(c) By adding at the end of said section the following subsections:

"(g) Any party adversely affected by the entry by the Secretary of an order granting or denying reparation may, within thirty days from and after the date of such order, appeal therefrom to the district court of the United States for the district in which the hearing was held: *Provided*, That in cases handled without oral hearing in accordance with subsection (e) or in which oral hearing has been waived by agreement of the parties, appeal may be to the district court of the United States for the district in which any defendant is located. Such appeal shall be perfected by the filing with the clerk of said court of a notice of appeal, together with a petition in duplicate which shall recite the prior proceedings before the Secretary and shall state the grounds upon which appellant relies to defeat the right of any adverse party to recover, or to establish his own right to recover, the damages claimed, with proof of service thereof upon each adverse party. Such an appeal by an appellant who has been ordered

by the Secretary to pay a reparation award shall not be effective unless, within thirty days from and after the date of the Secretary's order, the appellant also files with the clerk a bond in the amount of 130 per centum of the amount of the reparation awarded, conditioned upon the payment of any money judgment entered by the court against the appellant, plus interest and costs, including a reasonable attorney's fee for the appellee, if the appellee shall prevail. Such bond shall be in the form of cash, negotiable securities having a market value at least equivalent to the amount of bond prescribed, or the undertaking of a surety company approved by the court. The clerk of the court shall immediately forward a copy of the petition to the Secretary, who shall forthwith prepare, certify, and file in said court a true copy of the Secretary's decision, findings of fact, conclusions, and order in said case, together with copies of the pleadings upon which the case was heard and submitted to the Secretary. Such suit in the district court shall be a trial de novo and shall proceed in all respects like other civil suits for damages, except that the findings of fact and order or orders of the Secretary shall be prima facie evidence of the facts therein stated. An appellee shall not be liable for costs in said court and, if he prevails, he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of his costs.

"(h) Unless a defendant who is registered under this Act, and against whom an order for the payment of money has been issued, shows to the satisfaction of the Secretary within five days from the expiration of the period allowed for compliance with such order either that he has taken an appeal as provided for in subsection (g) of this section or that payment has been made in full as required by such order, he shall be suspended automatically as a registrant under the Act at the expiration of such five-day period until he shows to the satisfaction of the Secretary that the amount therein specified has been paid, with interest thereon to date of payment. If an appeal is taken by such defendant and the judgment of the court is adverse to the appellant, or if the appeal is dismissed, unless the defendant within the five days thereafter makes payment as required by the order, he shall be suspended automatically as a registrant until he shows to the satisfaction of the Secretary that payment has been made, with interest thereon to date of payment. If such a judgment is stayed by a court of competent jurisdiction, the suspension shall become effective five days after the expiration of such stay unless full payment has been made, with interest to date of payment, and shall continue until the defendant shows to the satisfaction of the Secretary that he has made such payment, with such interest.

"(i) Unless any other defendant, against whom an order for the payment of money has been issued, shows to the satisfaction of the Secretary within five days from the expiration of the period allowed for compliance with such order either that he has taken an appeal as provided for in subsection (g) of this section or that payment has been made in full as required by such order, such defendant shall be liable to a penalty of $500 per day for each day, after said five days, in which he engages in any business subject to this Act, until such defendant shows to the satisfaction of the Secretary that the amount specified in the order, with interest to date of payment, has been paid, which penalty shall accrue to the United States. If an appeal is taken by such defendant, said penalty shall not begin to accrue until five days after judgment by the court adverse to the defendant, or dismissal of the appeal. If such a judgment is stayed by a court of competent jurisdiction, the penalty shall become applicable beginning five days after the expiration of such stay unless full payment has been made, with interest to date of payment, and shall continue to be applicable until such payment, with interest, has been made.".

SEC. 8. Said Packers and Stockyards Act is further amended by adding after section 408 (7 U.S.C. 229) a new section 409 to read as follows:

"SEC. 409. Any delay or attempt to delay by a market agency, dealer, or packer purchasing livestock, the collection of funds through the mails, or otherwise for the purpose of or resulting in extending the normal period of payment for such livestock shall be considered an 'unfair practice' in violation of the Act. Nothing in this section shall be deemed to limit the meaning of the term 'unfair practice' as used in the Act.".

SEC. 9. Said Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181, et seq.), is hereby further amended by adding thereto a new section 206, to read as follows:

"SEC. 206. (a) It is hereby found that a burden on and obstruction to commerce in livestock is caused by financing arrangements under which packers encumber, give lenders security interest in, or place liens on, livestock purchased by packers in cash sales, or on inventories of or receivables from meat, meat food products, or livestock products therefrom, when payment is not made for the livestock and that such arrangements are contrary to the public interest. This section is intended to remedy such burden on and obstruction to commerce in livestock and protect the public interest.

"(b) It shall be unlawful for any packer to encumber, give a security interest in, or place a lien on, livestock purchased or to be purchased in cash sales, or on inventories of or on receivables from meat, meat food products, or livestock

products therefrom, except to the extent of the value of such livestock, inventories and receivables in excess of the amount which is owed to unpaid sellers of livestock in cash sales, and any provisions of a contract, agreement or other arrangement entered into by such packer shall be unlawful, and shall be unenforceable by any person, to the extent that it is in violation of this section.

"(c) For the purpose of this section, a cash sale means a sale in which the seller does not expressly extend credit to the buyer.".

SEC. 10. Said Packers and Stockyards Act is further amended by adding after section 409 (7 U.S.C. 229) a new section 410 to read as follows:

"SEC. 410. Debts of a bankrupt that are owing for the purchase of livestock, meats or poultry shall have priority in accordance with clause (5) of subsection a of section 64 of the Act of July 1, 1898, entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' (30 Stat. 563), as amended (11 U.S.C. 104(a)(5)), and shall have priority over all other debts and rents included within said clause (5) notwithstanding any other provision of law, if, at the time such debts were incurred, the bankrupt was a packer, market agency, or dealer subject to this Act.".

SEC. 11. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby. Pending proceedings shall not be abated by reason of any provision of this Act, but shall be disposed of pursuant to the provisions of the Packers and Stockyards Act, 1921, as amended, and the Act of July 12, 1943, in effect immediately prior to the effective date of this Act.

79-314 O - 76 - 2

# [COMMITTEE PRINT NO. 2]

FEBRUARY 5, 1976

94TH CONGRESS
2D SESSION

# H. R.

---

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY , 1976

Mr. _____ introduced the following bill; which was referred to the Committee on _____

---

# A BILL

To amend the Packers and Stockyards Act of 1921, as amended, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the proviso in the paragraph designated "Packers and Stockyards Act," under the heading "MARKETING SERVICE," in the Act of July 12, 1943 (57 Stat. 422; 7 U.S.C. 204), is amended by striking out "market agency and dealer" and inserting in lieu thereof "market agency (as defined in title III of the Act), every packer (as defined in title II of the Act) in connection with it livestock purchasing operations, and every other person operating as a dealer (as defined in title III of the Act)".

SEC. 2. Section 201 of said Packers and Stockyards Act (7 U.S.C. 191) is amended to read:

"SEC. 201. When used in this Act the term 'packer' means any person engaged in the business (a) of buying or otherwise acquiring in commerce livestock for purposes of slaughter, or (b) of manufacturing, processing, or preparing in any manner meats or meat food products for sale or shipment in commerce, or (c) of buying or otherwise acquiring or selling or otherwise marketing meats, meat food products or livestock products in unmanufactured form in commerce, on a commission basis or otherwise, either on his own account or as the employee or agent of the vendor or purchaser: *Provided, however,* That nothing in this section shall affect the jurisdiction of the Federal Trade Commission with respect to retail sales of meat, meat food products, livestock products in unmanufactured form, or poultry products as provided in section 406 of this Act.".

SEC. 3. Sections 202 and 312 (a) of said Packers and Stockyards Act (7 U.S.C. 192 and 213 (a)) are amended by deleting the phrase "in commerce" wherever it appears in said sections, and by deleting the commas immediately before and following the phrase "in commerce" in sections 202 (b) and 312 (a) of said Act (7 U.S.C. 192 (b) and 213 (a)).

SEC. 4. That the proviso in the paragraph designated "Packers and Stockyards Act" under the heading "MARKETING SERVICE" in the Act of July 12, 1943 (57 Stat. 422; 7 U.S.C. 204), is further amended by adding at the end thereof a new sentence as follows: "If the Secretary finds any packer is insolvent, he may after notice and hearing issue an order under the provisions of section 203 requiring such packer to cease and desist from purchasing livestock or poultry while insolvent, or while insolvent except under such conditions as the Secretary may prescribe to effectuate the purposes of the Act.".

SEC. 5. Said Packers and Stockyards Act is further amended by redesignating section 408 as section 411 and by adding to the Act a new section 408 to read as follows:

"SEC. 408. Whenever the Secretary has reason to believe that any person subject to this Act, (a) with respect to any transaction subject to the Act, has failed to pay or is unable to pay for livestock, meats, meat food products, or livestock products in unmanufactured form, or has failed to remit to the person entitled thereto the net proceeds from the sale of any such commodity sold on a commission basis; or (b) has operated while insolvent, or otherwise in violation of the Act in a manner which may reasonably be expected to cause irreparable

damage to another person; or (c) does not have the required bond, and that it would be in the public interest to enjoin such person from operating subject to this Act or enjoin him from operating subject to this Act except under such conditions as would protect vendors or consignors of such commodities or other affected persons, until complaint under this Act is issued and dismissed by the Secretary or until order to cease and desist made thereon by the Secretary has become final and effective within the meaning of this Act or is set aside on appellate review of the Secretary's order, the Secretary may notify the Attorney General, who may apply to the United States district court for the district in which such person has his principal place of business or in which he resides for a temporary injunction or restraining order. When needed to effectuate the purposes of this section, the court shall, upon a proper showing, issue a temporary injunction or restraining order, without bond. Attorneys employed by the Secretary of Agriculture may, with the approval of the Attorney General, appear in the United States district court representing the Secretary in any action seeking such a temporary restraining order or injunction.".

SEC. 6. Subsection 308 (a) of said Packers and Stockyards Act (7 U.S.C. 209 (a)) is amended to read:

"(a) If any person subject to any of the provisions of this Act violates any of the provisions of this Act or of any

order of the Secretary made under this Act, he shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of such violation.".

SEC. 7. Said Packers and Stockyards Act is further amended by adding after section 408 (7 U.S.C. 229) a new section 409 to read as follows:

"SEC. 409. Each packer, market agency, or dealer purchasing livestock shall, before the close of the next business day following the purchase of livestock and transfer of possession thereof, transmit or deliver to the seller or his duly authorized agent the full amount of the purchase price, unless otherwise expressly agreed between the parties before the purchase of the livestock. Any such agreement shall be disclosed in the records of any market agency or dealer selling the livestock, and in the purchaser's records and on the accounts or other documents issued by the purchaser relating to the transaction. Any delay or attempt to delay by a market agency, dealer, or packer purchasing livestock, the collection of funds through the mails, or otherwise for the purpose of or resulting in extending the normal period of payment for such livestock shall be considered an 'unfair practice' in violation of the Act. Nothing in this section shall be deemed to limit the meaning of the term 'unfair practice' as used in the Act.".

SEC. 8. Said Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181, et seq.), is hereby further amended by adding thereto after section 205 (7 U.S.C. 195) a new section 206, to read as follows:

**[Option No. 1]**

"SEC. 206. (a) It is hereby found that a burden on and obstruction to commerce in livestock is caused by financing arrangements under which packers encumber, give lenders security interest in, or place liens on, livestock purchased by packers in cash sales, or on inventories of or receivables from meat, meat food products, or livestock products therefrom, when payment is not made for the livestock and that such arrangements are contrary to the public interest. This section is intended to remedy such burden on and obstruction to commerce in livestock and protect the public interest.

"(b) It shall be unlawful for any packer to encumber, give a security interest in, or place a lien on, livestock purchased or to be purchased in cash sales, or on inventories of or on receivables from meat, meat food products, or livestock products therefrom, except to the extent of the value of such livestock, inventories and receivables in excess of the amount which is owed to unpaid sellers of livestock in cash sales, and any provisions of a contract, agreement or other arrangement entered into by such packer shall be unlawful, and shall be unenforceable by any person, to the extent that it is in violation of this section.

"(c) For the purpose of this section, a cash sale means a sale in which the seller does not expressly extend credit to the buyer.".

**[Option No. 2]**

"SEC. 206. (a) It is hereby found that it is a burden on and obstruction to commerce contrary to the public interest when livestock sold to packers in cash sales are transferred to such packers and upon such transfer the livestock, meat and meat product inventories, proceeds and receivables therefrom may immediately become collateral for other creditors of the packer leaving the livestock seller in an unsecured position until payment for his livestock is actually received.

"(b) There is hereby created a statutory lien for each seller of livestock to a packer in a cash sale. Such lien shall be applicable to the livestock of such seller and also to all inventories of, and receivables and proceeds from, meat and meat food products and livestock products in the possession of or belonging or owed to such packer, which were derived from all livestock slaughtered by or on behalf of such packer. The lien of each such seller shall be limited to the amount owed him in such cash sale and all such liens shall be applied pro rata with respect to such inventories, receivables and proceeds. Such statutory liens shall be considered perfected as of the date and time of transfer of possession of the livestock of the respective sellers to the packer or his representa-

tive, and shall have priority over any or all liens created by any person other than the seller of the livestock, including liens for taxes and other liens created by operation of law, notwithstanding any other provision of law.

"(c) For the purpose of this section, a cash sale means a sale in which the seller does not expressly extend credit to the buyer.

**[Option No. 3]**

"SEC. 206. (a) It is hereby found that a burden on and obstruction to commerce in livestock is caused by financing arrangements under which packers encumber, give lenders security interest in, or place liens on, livestock purchased by packers in cash sales, or on inventories of or receivables from meat, meat food products, or livestock products therefrom, when payment is not made for the livestock and that such arrangements are contrary to the public interest. This section is intended to remedy such burden on and obstruction to commerce in livestock and protect the public interest.

(b) All livestock purchased by a packer in cash sales and all inventories of, or receivables from, meat, meat food products, or livestock products derived therefrom shall be held by such packer in trust for the benefit of the sellers of such livestock until full payment for such livestock has been received by such sellers.".

SEC. 9. Said Packers and Stockyards Act is further

amended by adding after new section 409 a new section 410 to read as follows:

"SEC. 410. No requirement of a State or territory of the United States or any subdivision thereof with respect to bonding of packers or prompt payment by packers, for livestock purchases may be enforced by any State or territory of the United States or any instrumentality or subdivision thereof upon any packer operating in compliance with the bonding provisions under the Act of July 12, 1943 (57 Stat. 422; 7 U.S.C. 204), and prompt payment provisions of section 409 of this Act.".

SEC. 10. The Secretary of Agriculture is hereby authorized and directed to conduct for a period of two years, from and after a date ninety days after enactment of this provision, a study of the acquisition, by purchase or otherwise, of meat, meat food products, or livestock products in unmanufactured form by packers as defined in subsections 201 (b) and (c) of the Packers and Stockyards Act, 1921, as amended. Such study shall include the methods of acquisition and the manner and timing of payment by such packers for such meats, meat food products, or livestock products in unmanufactured form. The Secretary shall monitor in such fashion as he deems appropriate, for each such packer the elapsed time between acquisition of such meats, meat food products, or livestock products and payment therefor. For

purposes of such study, the Secretary shall have and may exercise any and all powers conferred upon him by the Packers and Stockyards Act, 1921, as amended. Within thirty days after completion of the first year of such study, the Secretary shall present to the Committees on Agriculture of the Senate and House of Representatives an interim report of the results of the study. Within sixty days after completion of the second year of such study, the Secretary shall deliver to said committees a final report of the results of the study together with recommendations, if any, for legislation which the Secretary deems necessary to deal effectively with any matters or problems revealed by the study. There is hereby authorized to be appropriated a sum of not to exceed $ to conduct such study.

SEC. 11. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby. Pending proceedings shall not be abated by reason of any provision of this Act, but shall be disposed of pursuant to the provisions of the Packers and Stockyards Act, 1921, as amended, and the Act of July 12, 1943, in effect immediately prior to the effective date of this Act.

Mr. POAGE. I thought that we had better proceed as far as we could here today. We want to see what items we have agreement on and what items we do not have agreement on.

We will start out with the first section. This first paragraph contains the wording:

Amended by striking out "market agency and dealer" and inserting in lieu thereof "market agency (as defined in title III of the act), every packer (as defined in title II of the act in connection with its livestock purchasing operations, and every other person operating as a dealer (as defined in title III of the act."

I wonder if we need an understanding as to just what that is.

Will the staff give us a response?

Mr. BOR. Mr. Chairman, this is the provision in the committee print which provides for packer bonding.

As the act now is worded, it provides that the Secretary can require reasonable bonds from every market agency and dealer.

What the section does is to expand the bonding requirements so it would apply merely to market agencies and dealers but also to packers as are defined on page 2 of the committee print.

Mr. THONE. Mr. Chairman, may I ask counsel a question?

Mr. POAGE. Certainly.

Mr. THONE. Would you give me the exact cross-reference to the Packers and Stockyards Act on this? I studied it at home earlier this morning. I did not find a direct cross-reference to the act itself.

Mr. BOR. If you have a little compilation which is put out by the Department of Agriculture, the amended section appears on page 8.

Mr. THONE. Page 8?

Mr. BOR. Yes. You will notice in the middle of the page there is a provision which says "An Act of Congress approved July 12, 1943."

Mr. THONE. That's the appropriation rider, is it not?

Mr. BOR. That's right. That is a rider which does not appear as part of the Packers and Stockyards Act itself, but is separate legislation. It established bonding requirements which apply to market agencies and dealers.

What we have one in the committee print is to expand on the coverage of that section so that it would apply as well to packers.

Mr. THONE. And there's no question, Mr. Counsel, in your mind, that even though that was a rider on the legislation of the appropriation bill, so to speak, there's any question about its effectiveness?

Mr. BOR. That's right, sir. It's fully effective, as much so as the Packers and Stockyards Act.

Mr. THONE. Fine. As you know, this Committee Print No. 2 is taken from H.R. 8410 which I introduced some time ago. I notice it is identical to our section, is it not?

Mr. BAIZE. Yes.

Mr. THONE. Thank you.

Mr. POAGE. Do we understand just what this means?

This includes every packer as defined in title II.

Who are those defined in title II as distinguished from other packers? What limitation is there?

Mr. BOR. The definition would include persons who acquire livestock and slaughter the livestock. It would include a person who processes livestock into meat and meat products. It also includes jobbers, wholesalers, distributors, and brokers and retailers. That's

the way the definition is worded but on page 1 the bonding requirement is applied only to a packer in connection with his livestock purchasing operations, so it would not apply to packers who are engaged in other types of operations but merely to those packers who were involved in livestock purchasing operations.

Mr. POAGE. I am not sure that I understand.

Do you mean by this that you are including the few who are left, like the country slaughterhouses which kill a yearling once a week and that sort of thing? Are they included?

Mr. BOR. As long as they fall within the coverage of the act——

Mr. POAGE. Are they covered by the act?

Mr. BOR. I mean those involved with operations which affect interstate commerce.

Mr. POAGE. Obviously, those kinds of packers are not involved in interstate commerce unless they live in Texarkana, Tex., or some similar location.

I am just trying to find out where we stand.

Mr. BAIZE. It is not in the intent that those be covered. It is those who are in interstate commerce who are actually buying cattle for resale in interstate commerce. That is the intent in this legislation.

Mr. POAGE. That may be the intent but is it the law?

We want to know that this does what we intend.

Mr. BOR. The definition of the term "packer" is worded in such a way as to only involve persons engaged in the business of buying or processing meats for sale or shipment in commerce——

Mr. POAGE. Then what you are telling us is that this does not apply——

Mr. BOR. It does not apply to the kind of person that you describe.

Mr. POAGE. That's what we want to know.

Mr. FINDLEY. Does the quote "in commerce" translate into "interstate commerce"? Is it one and the same term?

Mr. BOR. Yes. You'll notice the term "commerce" is defined on page 2 of the packers and stockyards compilation.

Mr. FINDLEY. Yes.

Mr. SEBELIUS. I am very much interested in this definition of the word "packer" as one buying or otherwise acquiring commerce livestock for the purpose of slaughter. We just brought an action out in Kansas where a feedlot and the Kansas Livestock Association with amicus curiae by the Texas cattle feeders and others where the Federal District Court in Wichita, Kans., ruled that feedlots don't have to be bound by falling under certain categories that Marvin McLain wants them to over in the Packers and Stockyards Act, but reading the language of this definition of "packer," any bureaucrat can just about make anybody that touched a cow would be a "packer" because again we'd have to define words which have been used in the definition. More on No. 3 "buying or otherwise acquiring or selling or marketing meats, meat food products or livestock products in unmanufactured form."

Is a live steer a livestock product in unmanufactured form?

Mr. BOR. The part that applies to the bonding provision is a packer in connection with his livestock purchasing operations. It would not affect the other type of packers who are defined in the act.

Subsection 201(a) is worded the same as it currently appears in the Packers and Stockyards Act. That section was not changed.

Mr. SEBELIUS. I would hope that we would have language in there that would definitely say that the commercial feedlots, which are only handling livestock, are not actually packers. They are only handling other people's stock. They should definitely be excluded from what we are trying to accomplish.

Mr. IMHOF. We could certainly accommodate that in the report, Mr. Sebelius. I think the case that you have reference to is the so-called Solomon Valley case, and that involves the efforts by the Packers and Stockyards Administration to register these feedlots as dealers.

Mr. SEBELIUS. That's definitely it. But it's another fringe thing. I don't want that to come climbing out of here to haunt me next November.

Mr. IMHOF. It would not be covered, sir, but we will make sure that the report clearly indicates that.

Mr. MELCHER. Mr. Chairman, I am referring to section 201(b) on line 6 on page 2.

This would make a local locker plant subject to the act. If the local locker plant sold hamburger to a restaurant under the terms—that is, under the interpretation of "commerce," even a small hamburger shop, if I'm not mistaken, has been blanketed under "commerce" in terms of selling meat.

Mr. IMHOF. If the locker plant purchased the meat that it used to fabricate that product in commerce it would be subject under the present statute.

Mr. MELCHER. You mean subject to the Packers and Stockyards Act?

Mr. IMHOF. Yes, sir.

Mr. MELCHER. Does this definition in 201 add to the existing scope of the act?

Mr. IMHOF. Yes, sir, it would. It would not in 201(b) I don't believe, but if you have reference to 201(c), which I think is in line 8 of page 2 of the Committee Print No. 2, it would bring under the scope of the Packers and Stockyards Act as packers, purveyors, brokers, and certain other entities which heretofore have not been covered by the Packers and Stockyards Act.

Mr. MELCHER. What has the Packers and Stockyards Act meant to my locker plant?

Mr. IMHOF. Heretofore if your locker plant purchased the meat used in commerce or sold the product made in commerce it is subject to the act as a packer.

Mr. MELCHER. And what did that mean?

Mr. IMHOF. That meant that it was subject to section 202 of the act, it could not commit unfair practices in commerce. There's a litany of——

Mr. MELCHER. Who read them the litany, and how often did they read it to them? Who checked it?

Mr. IMHOF. The Packers and Stockyards Administration checked them, sir. We have with us today a representative of the Administration, and he might be able to enlighten us as to how many cases were brought against packers in a given period of time.

Mr. MELCHER. I just wondered what they had to do. Did they have to have a letter every year or did somebody actually come out there and look at their books or did they fill out some forms or what did they have to do?

Mr. IMHOF. Perhaps if I could ask Mr. Glenn Bierman, who is associate administrator of the Packers and Stockyards Administration to give you a capsule summary of that, sir, might be the best way to do it.

Mr. MELCHER. It would be helpful to me.

Mr. BIERMAN. With the small plants, there's really nothing that they have to do other than conduct their business in an honest and fair manner. We do not require reports of small plants. We will entertain complaints.

Mr. MELCHER. It's a question of this: If you did have a complaint you would follow it up but you are not asking them to fill out any forms annually or quarterly or anything like that?

Mr. BIERMAN. That's correct, sir.

Mr. MELCHER. Is there anything in here that would ask them to do more than they are doing right now, filling out papers and complying with this?

Mr. BIERMAN. Nothing that I have seen.

Mr. MELCHER. Thank you.

Mr. POAGE. We are understanding, I take it, that we are not adding to the burdens of the intrastate operators; am I correct on that?

Mr. BOR. Yes, sir.

Mr. MELCHER. Mr. Chairman, I think it is more correct to say that they are all interstate because you couldn't do anything without being subject to the commerce clause as interpreted in sales and meat. Isn't that correct?

Mr. IMHOF. Well, I think a plant that generates any type of volume will ultimately either purchase across a State line, sir, but——

Mr. MELCHER. No. If they sell to a hamburger shop, that has been interpreted as being in commerce.

Mr. IMHOF. If it's across a State line, yes.

Mr. MELCHER. I mean within the State. I want this clear.

There are people who are traveling who stop at the hamburger stops. The sale is within the State. It's within the same town. But because the people that stop in at the hamburger shop are traveling, it has been ruled as "in commerce" and then subject to it.

Mr. IMHOF. There have been cases under the Civil Rights Act and perhaps in a few other connections in which such an extreme extension of the commerce clause has been effected. I am not aware of any case under this statute where anything quite that extreme has been effected.

Mr. MELCHER. Under the Packers and Stockyards Act.

Mr. IMHOF. Under the Packers and Stockyards Act, yes.

Mr. MELCHER. I am referring to the Wholesome Meat Act.

Mr. IMHOF. I don't believe even the Wholesome Meat Act has extended that far.

As you know, if a State's laws are at least not equal to those of the Federal statute, the State can be designated by the Secretary but it would not be an interpretation of extension of the commerce clause.

Certainly that has not yet happened in this act, sir, and I don't believe the Administration has any intention of trying to stretch this act that far.

Mr. MELCHER. Packers and Stockyards Act?

Mr. IMHOF. Yes.

Mr. POAGE. Let us get this next segment.

The language as provided, however, that nothing in this section shall affect the jurisdiction of the Federal Trade Commission with respect to retail sales and meat or poultry products as provided in section 406 of this act.

Do we understand that this clearly exempts poultry processing? This definition of packers does not, as I see it, include poultry processing.

Mr. IMHOF. That is correct.

Mr. POAGE. Are there any other questions?

[No response.]

We will then go to section 3 at the bottom of page 2.

Sections 202 and 312(a) of said Packers and Stockyards Act (7 U.S.C. 192 and 213(a) are amended by deleting the phrase "in commerce" wherever it appears in said sections, and by deleting the commas immediately before and following the phrase "in commerce" in sections 202(b) and 312(a) of said Act (7 U.S.C. 192(b) and 213 (a)).

What is the purpose of that?

That would read that it was an attempt to do what the House endeavored to do yesterday in the Smith bill on gas and apply Federal control to intrastate actions.

Mr. BOB. Mr. Chairman, this is just a technical change. There wasn't any need for the reference to the term "in commerce" in those subsections because the definition of the term "packer" was changed to include the words "in commerce" in each of the categories that appear there. So it was felt that since it was already explicit in the definition of the term "packer" it was not needed in those two subsections.

Mr. POAGE. What harm did it do?

Mr. IMHOF. In the course of administratively enforcing the statute, the present statute requires not only that the packer be a packer who operates in commerce but also that the individual transaction which is charged to be a violation of the statute also occurred in commerce. The change which would be affected by this bill would require or continue the requirement that the packer be a packer who operates in interstate commerce, but it would eliminate the requirement that each and every transaction charged as a violation was an interstate transaction. So this would reach intrastate transactions which were unfair or otherwise in violation of the statute by an interstate packer.

Mr. POAGE. I think that is a fair explanation and I think the majority is strongly in favor of that. I just want to point out that my own feeling is that we ought not to sit here and simply try to set ourselves up as the judge and the jury of everything that takes place within the State of Texas or the State of New York or any other State.

I never believed that we really had the authority to handle every transaction within the State. It may be that unless we do we can't achieve anything with this kind of a bill. Because if Mr. Melcher sells a bunch of cattle to a packinghouse in Montana, the transaction

takes place in Montana and it is not an "in commerce" sale. But if they don't pay him, we are trying to say that they've got to pay him.

I had based my reasoning that we had a right to require this because we licensed that packer to do business and we could require that packer who was subject to Federal license, we could control the way in which he does business. We can't control the transactions within the State other than to the extent that we can control the actions of that packer.

We can't control Mr. Melcher's actions in selling to them, but we could control the way in which that packer does business. Don't we have a right to do that?

Mr. IMHOF. That is exactly correct.

Mr. FINDLEY. We have the right under the present law?

Mr. POAGE. Yes; we have the right.

Mr. IMHOF. But not as to intrastate action. That is the purpose of this bill.

Mr. POAGE. Wait. The purpose of this bill is to prevent him from failing to pay. We do control that packer in a great many respects right now under the Packers and Stockyards Act and we control the way in which he conducts his business within the State.

We do it because he is in commerce and before we give him a license to engage in interstate commerce we make him submit to these rules.

Mr. IMHOF. Sir, I believe that you have just stated very precisely the purpose of this bill.

But under the statute, as it presently exists, unless the packer is in commerce and the transaction in question is in commerce, the administration cannot move against him. The purpose of this bill is to make sure that the very practices that the chairman has just described can be reached by the administration if they are committed by a packer who is an interstate or an in commerce packer.

Mr. POAGE. We've extended this Packers and Stockyards Act to where it covers a lot of these auction rings, haven't we?

Mr. IMHOF. Yes.

Mr. POAGE. Most of the actions which take place in the auction ring are purely intrastate commerce.

Mr. IMHOF. Yes, sir; that is correct.

Mr. POAGE. I said that most of the actions that take place in the Abilene auction, for instance, are intrastate transactions. The cattle were grown there; they've never been out of Abilene and the man sells them to somebody in the State; he is paid in the State; they are probably slaughtered in the State; but at the time that the transaction takes place at the auction it is purely an instrastate transaction. But we control it.

Mr. IMHOF. If the Abilene auction is a posted stockyard——

Mr. POAGE. I beg your pardon?

Mr. IMHOF. I'm not personally familiar with the Abilene auction, but if it is a posted stockyard——

Mr. POAGE. Well, of course Abilene is. But as you know, all of the larger ones are.

Mr. IMHOF. Yes, sir. If it is a posted stockyard, even though the action takes place between two Texans and the cattle, in fact, do not leave the State of Texas, it is deemed to be in commerce by virtue

of the statute against the Wallace case earlier in the administration of the act.

Mr. POAGE. And we do that not because it's interstate commerce but we do it because we have the right to license this auction ring.

Mr. IMHOF. Yes, sir.

Mr. POAGE. I thought that we claimed the jurisdiction over these packers on the same basis. I thought that we claimed the jurisdiction of the packers not because every transaction was in commerce.

The Chair wants to observe at this moment that a quorum has been established.

Maybe I am splitting hairs but I feel a great deal more comfortable in predicating this jurisdiction on our authority to license these packers than I do upon trying to control intrastate transactions.

Mr. IMHOF. Yes, sir. I think you have described precisely the thrust of this bill. That is exactly what the objective of this bill is intended to achieve.

Mr. POAGE. That's why I am asking why do we want to take out these words in commerce?

Mr. IMHOF. Under the present act, the administration can only go after the interstate transactions of an interstate packer, and yet the interstate packer could commit any number of intrastate violations including the ones you listed.

He could escape scot-free under the present statute. This bill would cure that problem.

Mr. THONE. As a matter of fact the administration has had substantial problems directly in this area, has it not, Mr. Bierman?

Mr. BIERMAN. We have had a number of complaints come in from farmers with respect to purchases by packers or dealers who are interstate. The farmer may know that the dealer is registered, but if the dealer, even though he is registered, decides to resell that livestock locally within the State and not through a market, then it may become an intrastate transaction and can raise problems with respect to jurisdiction.

In some of these cases, the transaction would not be subject.

The same thing can happen with packers who have an intrastate plant as well as an interstate plant. In that case we would turn the complaint over to the State after we had checked it out and found we did not have jurisdiction. That may take several months.

Mr. FINDLEY. Mr. Chairman, this leaves the impression that such violations would go scot-free.

Such violations would ordinarily be subject to action at the State level, would they not?

Mr. BIERMAN. They would be subject to whatever State laws would be applicable, yes.

Mr. FINDLEY. The question in my mind is whether a case has been established by the change in the law. I am not aware of it in Illinois, for example. I have not heard such complaints. In the absence of a case in support of a change in the law, I would be inclined to leave the law as it is.

Mr. HIGHTOWER. If I understand the discussion, if we do not change the law and do not take out the words in commerce, then if we had a purchaser buying for Swift in Amarillo, Tex., which is interstate

commerce, but he bought the cattle in one county in Texas and was transported to another county in Texas for slaughter and then resold to a supermarket in Amarillo—that would be intrastate and would not be subject to the provisions.

I think that's what we want to do away with because there they are in interstate commerce and we want them to pay promptly for that cattle. So I think that we do need to delete these words here, in commerce, because they are covered by the Packers and Stockyards Act and we want to be sure that that in-Texas transaction is going to be covered by requiring the prompt payment.

Mr. FINDLEY. If a case can be made for coverage of a transaction like that, then it seems to me it can be made for any transaction. Why don't we just make this Packers and Stockyards Act a national comprehensive program and apply it to every transaction?

Mr. HIGHTOWER. Because a lot of these small packers who have——

Mr. FINDLEY. Why not?

Mr. HIGHTOWER. I am talking about the situation that Chairman Poage referred to where they brought in a yearling—a locker plant type operation killed one—and a situation might exist there where the plant would get part of the meat as a result for its services, and then resell that to some local grocer or hamburger shop.

We are not trying to get that. We are trying to get these packers who go out and buy a large number and bring them in. When my cattleman in Potter County sells to Swift he thinks he is dealing in interstate commerce—whether that beef is going to be sold in interstate commerce or not.

Swift being a national company, then he knows it is going to be covered by the Packers and Stockyards Act, so he is relying on the sale of them. That is the kind of transaction that we are talking about.

One of the things that has prompted this legislation is this—our experience with American Beef—American Beef was a big outfit. Everybody in that area was so proud to have them because they were going to be killing hundreds of cattle a day, yet they went broke and a lot of people got caught holding the sack.

That is what has prompted this legislation. If we are not going to have an effective provision for prompt payment, then we don't need the legislation at all. Unless I have completely misunderstood what our staff has said here, we do need to take these two words out because we are still going to be dealing with companies that are covered by the Packers and Stockyards Act, but we do not want to have to impose the additional test—did all that beef bought from Farmer Jones, was it resold in interstate commerce or did it go downtown Amarillo?

Mr. ENGLISH. I think, too, that there is a question of consistency. If you have a plant in interstate commerce, they will have one set of operations with regard to meat that is sold over a State line, and another set of rules for meat that is bought and sold within the same State. I think this creates a very inconsistent pattern.

This also raises a question regarding the assurance people will have locally. The guy who comes and sells the cattle will have to ask, "Where are you going to sell my beef?"

"Is it going to be sold in Amarillo or Oklahoma? If it's going to be sold in Oklahoma I won't let you have the cattle."

The question we have to resolve then is that of inconsistency. You get into the small plants that are obviously going to be sold within the State you are in an entirely different ball game.

Mr. POAGE. But there has to be some basis on which the Congress can impose Federal control. It's either got to be in interstate commerce or the rule must be somewhat different from what counsel described. I think that it is—I don't set myself up as knowing—but, for instance, the Texas Power & Light Co. will not accept power generated on your side of Texoma Lake. The reason they won't do it is that they do not want to get into interstate commerce.

They won't sell power into Oklahoma or to anybody who does sell power in Oklahoma. There are some coops on Jack Hightower's side of the river which are also on your side of the river, Mr. English.

The Texas power companies will not sell that power because they do not want to get into the situation of being engaged in interstate commerce. In Waco it would be intrastate, but they feel that if they do any interstate business, their whole business can be and will be—and I think they are right—controlled by the Federal Government.

Mr. ENGLISH. I believe that's exactly the point. That's a consistency we would be following.

Mr. POAGE. What I am trying to say is this: That should be our basis following this rather than trying to declare these transactions at Abilene are interstate transactions. They are not interstate transactions but they are transactions with somebody doing an interstate business and therefore, we can prescribe the rules under which that individual does an interstate business. It seems to me it makes some difference and makes it easier for me to take this as one who believes we ought to maintain some States rights.

Mr. ENGLISH. It maintains a wholly consistent position with the way the law is now in the situation you are talking about.

We are dealing here with an operator selling interstate.

Mr. POAGE. That's right. We can impose regulations on him as to how he deals.

Mr. ENGLISH. Correct.

Mr. HIGHTOWER. That's what we are doing here. We're removing that second test. The first test, he's already in interstate commerce and is already covered by the Packers and Stockyards Act, but this removes the second test whether this man who is in interstate commerce actually does an act down here which is improper.

Mr. POAGE. And you may well be right in saying that that ought to be removed, but it makes me feel better to know that we are imposing these regulations because Wilson and Co. is engaged in interstate commerce, and we are prescribing a way Wilson and Co. shall operate rather than saying that Wilson and Co., if they go out to buy cattle from Jack Hightower, that we have a right to control that transaction. I don't think that we have any right to control that transaction except the license that we grant to Wilson and Co. We can make it contingent upon how they treat Jack Hightower as well as how they treat the man from New Mexico.

I guess maybe we're splitting hairs but I like to have some defense that I simply didn't wipe out State rights. I think that Mr. Hightower makes a perfectly valid point, that we had better leave this language in there.

Does anybody feel that we had better take it out?

OK, then, we will leave it. I guess that takes us up to section 4. Will you proceed?

Mr. IMHOF. Section 4 provides that:

> If the Secretary finds any packer is insolvent, he may after notice and hearing issue an order under the provisions of section 203 requiring such packer to cease and desist from purchasing livestock or poultry while insolvent, or while insolvent except under such conditions as the Secretary may prescribe to effectuate the purposes of the Act.

The committee will notice that in lines 8 and 9 the words "or poultry" have been left in here. That is an oversight and unless the chairman wishes to extend the act to cover poultry we should delete "or poultry" in lines 8 and 9.

Mr. POAGE. Is there any objection?

The Chair hears none. It is so ordered.

Mr. BEDELL. I should tell you, Mr. Chairman, that I had one of the poultry people check with me. It was, in our area at least, the problem of many who raise poultry is really identical with that one of those who raise cattle in that they do raise them, they do sell them in substantial quantities to the packers.

I know the testimony we have before us indicated that the poultry was owned by the producer. At least this person felt pretty strongly that in the cases wherein the poultry was owned by a feeder then they felt they should have protection similar to that offered the marketer of cattle.

Mr. POAGE. Poultry is owned by the producer oftentimes but is it not all under contract with the processor? You had a lot of people who grew chickens and turkeys. They sold them to processors.

As far as I know there is not any of that left. I don't know anybody who buys that way in our country at the present time.

Either the processor himself owns the production plant or if it's a farmer, he owns the plant and he owns the chickens or turkeys, but he has contracted with the company that hatched the chicks and delivered him the baby chicks, and he has contracted with them to take them at a certain time. So there is not any real ownership, as I see it.

Mr. BEDELL. Would it be agreeable to the Chairman for me to check this further? If I find out that there is a significant number of cases, then I will come back to the committee.

Mr. POAGE. Yes; I think that should be done.

We will then tentatively strike out "or poultry" giving Mr. Bedell the opportunity to report again to the committee.

Mr. THORNTON. In that regard were there similar changes made earlier in the act so that it did not affect poultry people? I apologize for coming in late.

Mr. THONE. That is correct. Poultry is exempted?

Mr. POAGE. Yes, poultry is exempted.

Mr. THORNTON. Thank you.

Mr. POAGE. There is nothing to this section except to confer the authority to the Secretary?

Mr. IMHOF. That's correct.

Section 5 of the bill complements section 4. Section 4 provides that the Secretary can issue a cease and desist order while insolvent and

section 5 provides that the "Secretary, if he has reason to believe that any person subject to this act, (a) with respect to any transaction subject to the act, has failed to pay or is unable to pay for livestock, meats, meat food products, or livestock products in unmanufactured form, or has failed to remit to the person entitled thereto the next proceeds from the sale of any such commodity sold on a commission basis; or (b) has operated while insolvent, or otherwise in violation of the act in a manner which may reasonably be expected to cause irreparable damage to another person;" the Secretary can go to court and seek a temporary restraining order against further operation by that packer except under such terms as the court imposes for the protection of people dealing with that packer until the Secretary is able to complete the administrative proceeding initiated under section 4 of this bill.

Mr. POAGE. Now this does not actually provide for the bond but grants the authority to the Secretary to seek injunctive relations if whatever the bill provides in regard to that bond is not carried out. Isn't that right? This doesn't grant the authority for a bond.

Mr. IMHOF. That is correct.

Mr. POAGE. So that the question of bonding is yet to come up. This doesn't make our decision as to whether we are improving bonding or not, but it says that if we do approve it the Secretary can enforce it.

Mr. THONE. Mr. Chairman, I feel very strongly that this is an important, necessary section to the legislation.

Mr. POAGE. I agree.

Mr. THONE. One question: Counsel, can you answer this? I talked to staff counsel before on this. Does this injunction authority allow ex parte?

Mr. IMHOF. I don't believe the bill has the thrust of changing the present law on that, Mr. Thone.

Mr. THONE. Where is the present law in the act regarding injunctions? I didn't think they had the authority.

Mr. IMHOF. The present law is you can seek contemporary restraining order ex parte but it is limited to a maximum, I believe, of 10 days. Perhaps one of the committee members could confirm that, within which time there must be notice to the opposing party for an opportunity to appear.

Mr. THONE. Let's be sure of that. We had that wrangle, as you know, with the Commodity Futures Trading Act, and there is an excellent provision in there. I know that the Chairman also feels very strongly on this and I certainly do, that the parties have a chance to come in before the court.

Mr. IMHOF. I believe that is guaranteed, sir, but we will certainly accommodate that in the report.

Mr. THONE. Fine. Thank you.

Mr. POAGE. Let's go to section 6.

Mr. IMHOF. Section 6 of the bill, sir, provides that if any person subject to any of the provisions of the act violates any of those provisions or indeed violates any order of the Secretary made under this act, he shall be liable to the person or persons injured thereby for the full amount of damages substained in consequence of such violation.

Mr. POAGE. That's common law anyhow.

Mr. Bor. Mr. Chairman, there are some substantive changes that are being made by this provision.

At the present time this provision applies to stockyard owners, market agencies and dealers. It does not apply to packers.

The effect of the inclusion of the provision is to say that if you have a packer which has been in violation of section 202 of the act, for example, a packer that engaged in an unfair or a discriminatory practice or otherwise violated section 202 and has caused injury or damages to another person, that person now would have the opportunity to go to Federal District Court and obtain recovery of damages which have been incurred as a result.

There is one technical change that we would like to make to this section, and that is to exclude "poultry" from the section and so it is our suggestion that this would read:

"If any person subject to the provisions other than title V of the act"—if we add the words "other than title V of the act"—that would mean that poultry would not be covered by this particular provision. But anybody who falls within the definition of the term "packer" would be covered, and as a result, anyone who is injured by unfair practices by packers would be able to resort to the courts for recovery of damages.

Mr. Poage. Well, as to this poultry provision, I agree we would want to eliminate "poultry" from the provisions of this act but "poultry" is covered by section 5 of the existing law. Isn't that correct?

Mr. Bor. That's correct.

Mr. Poage. If there are any damages by a violation of what is now imposed upon poultry, aren't we just taking that out of the law if it's already in the law? Aren't we just taking it out?

Mr. Bor. Section 308(a) as it is now worded doesn't refer at all to poultry. It only deals with market agencies, stockyards, and dealers.

Mr. Thone. May I interrupt here?

Mr. Poage. Yes.

Mr. Thone. I'm sorry. I'm not feeling very well today. I got out of a sick bed to come down here because I feel so strongly on this. I am a little muddled.

I read this section earlier this morning. How does this section change the current 308? I know what you just addressed yourself to, Mr. Bor—stockyards, market agencies, or dealers—now we put "person" in here and now we're taking out "poultry", how does this change the existing law and why is it necessary at all in here?

Mr. Bor. What change is effected is that under 308(a) as it is currently worded, it does not apply to packers as it's defined under the act. The effect of the change is to bring "packers" under section 308(a).

Mr. Thone. You're absolutely right.

Mr. Poage. Does anybody find any objections?

[No response.]

Mr. Poage. We move now to section 7.

Mr. Imhof. Moving to section 7, Mr. Chairman, would add to the statute a new section 409. Section 409 has two parts, essentially.

The first part provides that:

Each packer, market agency, or dealer purchasing livestock shall, before the close of the next business day following the purchase of livestock and transfer

of possession thereof, transmit or deliver to the seller or his duly authorized agent the full amount of the purchase price, unless otherwise expressly agreed between the parties before the purchase of the livestock.

Mr. POAGE. Right there I want to stop because I think that is one of the important parts here.

We, of course, have got to maintain the right of individuals to sell on credit. I don't think Congress would have the authority to deny individuals to make such transactions as they wanted to, and if I wanted to give you 6 years' credit, I think that I've got a right to do so. But if we don't require that to be evidenced by some kind of written instrument, aren't we opening the door to a return of just about what we have because the packer comes in and says: Yes, but I had an agreement, we had an understanding that we weren't going to pay for 10 days or 2 weeks.

It is almost impossible to disprove that sort of thing. Is it logical to require that this would be a transaction where it says "unless otherwise expressly agreed" in writing between the parties?

Mr. IMHOF. We could certainly insert that, Mr. Chairman. I did you a disservice in that I stopped reading a little bit too short.

It says that:

Any such agreement shall be disclosed in the records of any market agency or dealer selling the livestock, and in the purchaser's records and on the accounts or other documents issued by the purchaser relating to the transaction.

There would certainly be no objection to inserting the terms specifically "in writing" there, but that was precisely what was intended.

Mr. POAGE. I didn't read the rest of that, and I think that attempts to do exactly what I am talking about. I think if you add the words "expressly agreed in writing" and then keep those words, then you would clearly have it.

Mr. IMHOF. Your suggestion is to insert those words in line 13 on page 5 between "agreed" and "between," I believe.

Mr. POAGE. Yes; that is what I would do. Is there any objection on that?

[No response.]

Mr. BEDELL. Quite a lot of the cattle sold in our area is sold yield and grade. So they pay according to the yield of the graded carcass after it is slaughtered.

Mr. POAGE. Yes, I know that.

Mr. BEDELL. What would they do? Would they enter a written contract and it wouldn't be paid for for 10 days?

Mr. POAGE. That's exactly what they would do.

Mr. IMHOF. That is correct.

Mr. POAGE. I just know how easy it is to come in and say: "Oh, yes, we had a certain agreement." You can hardly prove the contract.

Mr. BEDELL. This would in no way interfere? That is, you could easily enter an agreement with a farmer that you are going to pay yield and grade and you will get your 10 days; is that correct?

Mr. POAGE. That's correct.

Mr. THORNTON. May I ask a question in regard to that?

Can such an agreement be an ongoing agreement or arrangement between the particular farmer and the packer to the effect that sales will be on the basis of yield grade until otherwise notified? Will that

suffice or will there have to be a new agreement signed at the time of each new sale?

Mr. Imhof. Let me refer the question to Mr. Carter, who is Assistant General Counsel of the Agriculture Department. He has worked with the enforcement of this statute for 25 years.

I wonder if I can address to him the question of whether or not the agreement in writing between the parties, the packer and the livestock dealer, has to be renewed each time there is a transaction or whether there can be a continual course of dealing under writing under which credit would be extended by the seller to the buyer?

Mr. Carter. This is a provision that is not in the current regulation of the Department. So I'll just speak to the language that's in the bill.

It would seem to me that the language would permit an agreement that would be an ongoing agreement until modified or canceled by the parties.

The language of the bill says: "Any such agreement shall be in writing and disclosed in the records of the market agency or dealer." There is no specific requirement that this be an express agreement between the parties before each purchase of livestock.

So it seems to me on that basis it would be interpreted as meaning that you could have a written and ongoing agreement until canceled or modified by either party.

Mr. Thornton. Certainly, Mr. Chairman, I would hope that that would be the effect. However, in reading the language I was concerned and wanted to get a clarification for the record because of the words "otherwise expressly agreed between the parties" and at the conclusion of the next sentence "* * * must be shown on the records of documents issued by the purchaser relating to the transaction."

I was concerned in the rulemaking activities that those words might be interpreted as signifying that we should require the seller to execute the written document on each occasion on which he takes a head of livestock to the market in order to continue the practice which many sellers do follow, that is by selling by yield grade.

Mr. Poage. I would not think that these words could be so interpreted, but they might be.

Mr. Thornton. I think it would be sufficient if an appropriate note is made that a continuing agreement is contemplated.

Mr. Poage. We can note that in our report. We can say that we don't require a written agreement for every particular transaction.

I talked to one gentleman who has sold stock to the American Meatpackers. He lost a substantial amount of money. He said: I knew their condition and I knew what sort of shape they were in, but I took the chance.

That fellow would undoubtedly be perfectly willing to sign up with a packer with whom he is dealing until further notice, that so much credit would be extended to him. However, hundreds of folks are just bringing in a small bunch. They don't want to do that.

Certainly they are going to insist on signing up every time, so we're not saying here that it has to be done, but it has to be expressly agreed upon, and the agreement can be for a certain time or an unlimited time.

We will make a note of that and put it in the report.

Mr. Imhof. Yes, sir.

The provision is modeled on the existing provision, the packers and stockyards regulations with a small modification, but under that provision I understand from Mr. Bierman that the ongoing arrangements are considered to be appropriate.

The second portion of section 409 which would be added to the statute by section 7 of the bill, Mr. Chairman, attempts to get at the problem of the float. The specific provision:

> Any delay or attempt to delay by a market agency, dealer, or packer purchasing livestock, the collection of funds through the mails, or otherwise for the purpose of or resulting in extending the normal period of payment for such livestock shall be considered an "unfair practice" in violation of the act.

There's one more sentence there which you will observe, which is intended to make clear that this does not affect other unfair practices of the statute which are already contained in the statute.

Mr. POAGE. Does everybody agree to that?

Mr. HIGHTOWER. Mr. Chairman, during the hearings there was quite a bit of discussion about this point and the possibility raised that we might statutorily provide for some procedure that would cut down on the float, I wonder if by phrasing it in this way are we anticipating that the Packers and Stockyards Commission would issue some kind of rule and regulation addressing itself to this question of the collection of funds or delay of collection of funds through the mail?

Mr. BAIZE. Yes.

Mr. IMHOF. They certainly would be given authority under the existing statutes to flush this out in the course of dealing with packers and livestock producers.

Mr. HIGHTOWER. I just wonder how much we want to depend on that or whether it might not be better to be a little bit more specific in the language of the bill itself.

There was some question at the time of the hearings that we might provide that checks could not be from a Federal Reserve district bank.

Mr. POAGE. Yes; and we ran into the problem of having so many places that that would almost allow you to span a continent.

If you happen to be at the right place, then that might happen.

Mr. HIGHTOWER. I am a little concerned about this being rather vague because in collection through the mails our experience in my own town, which is 50 miles from Wichita Falls and it would take 4 or 5 days to get a letter sometimes.

What is the normal transaction through the mail? How much time should we allow for a mail transaction?

I wonder if we could be more specific about the distance that is involved and if we could be more specific about time.

I just raise that point and ask the staff about your thinking on this. Do you think this language is tight enough?

Mr. IMHOF. We gave it quite a bit of thought. Mr. Poage has explained some of the difficulty with some of the provisions that were suggested during the course of the hearings.

For example, that if he made payable on the bank in a Federal Reserve district or in an adjoining district.

But we did find that those districts cover enormous territories. It was difficult to see whether that would result in any substantial improvement.

Now, there are arbitrary rules that exist in other areas. For example, in some, I believe in the Federal Rules and Civil Procedure, there is

provision that you can serve another party by mail and if you do you are permitted 3 additional days, which is an arbitrary period selected, I assume, to account for the delay that would normally be encountered in the mailing of a document.

It might be that the committee would want to consider something like that, but we must recognize that any such selection would be arbitrary and I don't know how useful it would be from the point of view of the producer and the packer.

Mr. HIGHTOWER. I'm just concerned about the fact that they could say that we put it in the mail and if that is going to be an automatic excuse then there could be some very inordinate delays. They could say, "We're sorry, but the mail didn't come through. We'll wait another week."

Mr. POAGE. If we impose the burden on the packers and stockyards people to make rules which would prevent this float, then they can make rules much better than we can pass laws.

They change them a whole lot faster than we change laws.

It would seem to me that it's probably better that they make the rules that would apply differently in Texarkana and in El Paso. There are three Federal Reserve districts within 50 miles of Texarkana, and two in El Paso.

You could make different rules to fit different places but we can hardly by law say here, that if you live in one county in Texas and another in Arkansas, that you are in three districts. We can't say that if you live outside of those counties that you are not.

So it seems to me that placing this authority with the agency probably is desirable rather than for us to try to detail just what it should be.

Mr. HIGHTOWER. I have no specific suggestions for a change.

Mr. BEDELL. I do have a suggestion. I would add a sentence which would say in effect: "Any obvious attempt to obtain float by making payment to a bank wherein the purpose obviously is to obtain extra time shall be considered a violation of the act."

Mr. POAGE. As a matter of law, when you say obviously, what is it? The rulemaking authority, I think, can pretty well cover it. But I doubt if you can define here in the law what is an obvious attempt.

Mr. BEDELL. I'm not sure.

Mr. POAGE. The rulemaking authority, I think, can pretty well cover it.

Mr. BEDELL. My concern is this: It would seem to me that if you are a packer in Amarillo and you do all of your banking in some small town with poor mail service 100 miles out, it is obvious that you did that in order to obtain time on your float. You could do your banking in Washington State and have it mailed to Texas.

It would seem to me that if we could put wording in which would indicate that if it was held and that that was what you were trying to do, then, that could be considered a violation.

I think it would be in our interest to try to put it into law.

Mr. POAGE.We are saying in the law that any delay or any attempt to delay would be a violation.

Mr. BEDELL. Is there any way it could be worded at this time to prevent such activity by the packers?

Mr. IMHOF. I believe in conjunction with the regulations to be issued by the administration, Mr. Bedell, it certainly would. We don't intend for the perfection of this language which certainly might be improved. We did make a bona fide effort in conjunction with the Department to draft some language which would accommodate the problem.

I think it would, however, be useful in the report to indicate that we are attempting to reach precisely the type of problem you just described, and I would propose to do that.

I wonder if I could ask Mr. Carter to address that.

Mr. POAGE. Certainly.

Mr. CARTER. I want to just make one point. Mr. Imhof had indicated that this was done in conjunction with the Department. We were requested to give drafting service, but I want to point out for the record that I am here today to give you technical advice based on what limited knowledge I have in the area. We are glad to do that.

We are glad to offer our drafting services but this is not to be deemed approval or disapproval.

Mr. BEDELL. You didn't bring the Office of Management and Budget with you?

Mr. CARTER. No.

Mr. IMHOF. No, Mr. Bedell, and I was not intending to suggest that the administration sent this bill up here.

Mr. POAGE. All right. Let's proceed. We get to some sticky questions now.

This is section 8.

Mr. BOR. Mr. Chairman, the next provision, section 8, has three separate options listed.

The options are designed to treat the problem of an unpaid seller of livestock where there has been a cash sales transaction.

The first option would make it unlawful for a packer to provide a lien on livestock that has been purchased on a cash sales transaction except where it's in excess of the amount that he owes to an unpaid seller.

If he does place a lien on the livestock it provides that the lien shall be unenforceable. This is the first option.

I might mention what it does not do. This makes it unlawful for a packer to place a lien but it does not affect any liens imposed by statute, such as a tax lien, and a tax lien would still operate unaffected by the provisions of this section.

What it would do in the event that there is a lien that has been placed by a packer which is prohibited by this act is to make it unenforceable. Therefore, the person to whom the lien was extended would no longer be a lien holder and in the event of bankruptcy would be a general creditor sharing along with other general creditors in the assets of the bankrupt and would be paid only after the claims of lien holders and creditors with priorities had been satisfied.

That's option 1.

Option 2—I might also mention that in option 1 the unpaid seller is not provided a lien. He remains in the same situation as he currently is.

Option 2, as distinguished from option 1, would give the unpaid seller a lien in the event there was a cash sales transaction. He would

have a lien that would have priority over any other liens including tax liens and other liens that are created by operation of law.

So option 2 would give special protection to the unpaid seller by providing him with a lien and in the event the packer had given a bank a lien in order to obtain credit, that lien would still exist but it would be secondary to the lien that had been created by this provision for the benefit of the unpaid seller.

Mr. THONE. Mr. Bor, I notice they are not necessarily mutually exclusive, are they?

Mr. BOR. That's correct. You could, for example, adopt option 1 which would make it unlawful to provide a lien in favor of another party and at the same time adopt option 2 which expressly gives the unpaid seller a statutory lien which would benefit him and protect him against tax liens and other liens that are created by operation of law.

Option 3 takes a third tack. This was derived from a court of appeals decision which dealt with the situation of an unpaid seller of livestock.

This option provides that if a person had sold livestock to a packer in a cash sales transaction and had not paid the seller, the seller would be holding the livestock under a trust arrangement for the benefit of the unpaid seller. If he did, in fact, subsequently sell the livestock, then the receivables and proceeds would also be held in trust for the benefit of the unpaid seller.

We intended to add a couple of words to this section. After the word "receivables" in line 19 we would like to add the words "and proceeds" to make clear that the trust would apply not only to the receivable but also to any cash that might have been realized by the packer upon the sale of the meat products to a third party.

We have another suggestion for option 3 and that is we neglected to include the definition of cash sales which we have included in options 1 and 2 as an additional paragraph.

We would just add a paragraph (c) which would be identical to paragraph (c) on line 5 of that same page.

There is one final addition which we would like to suggest for consideration in option 3. This would make it clear that payment would not be considered to be made if a seller of livestock had received a payment instrument which had been dishonored.

For example, if he had been given a bum check or a draft which was dishonored, then the fact that he had received the check or draft would not constitute payment for the purpose of this section.

Mr. POAGE. I think that right here is probably the biggest issue to come before us. It occurs to me—the question occurs—do we need any of these, having made the provisions we have heretofore about the prompt payment, and we have provided for prompt payment. Then, do we need to put any of these three provisions in about liens?

As I understand it there is a recent court decision to the effect that as a matter of fact the title doesn't pass until payment is made. I presume that that, of course, recognizes the title to pass if there's an agreement as to the time, but if it's a so-called cash sale, the title has not passed until the payment is made.

Doesn't that give all the protection that we can write in here about liens?

Mr. BOR. Mr. Chairman, that decision is a fifth circuit decision, and has not been applied to my knowledge in other circuits.

There has been a petition for rehearing filed with the fifth circuit so we are not altogether sure whether that particular decision will become the law in the fifth circuit.

You might want to consider these three options in light of that situation.

It is true, however, that the fifth circuit has ruled in a decision last year that when you have an unpaid seller, in a cash sales transaction that title has not yet passed to the buyer.

They do have a qualification; the unpaid seller would prevail against the bank who had extended credit to the packer if the bank had reason to believe or know that the packer had not made payment for livestock it was purchasing from livestock owners.

In that decision the facts were pretty clear that the bank was aware of the pattern of conduct that had been engaged in by the packer.

Mr. POAGE. We have that problem in any of these liens. We have the problem of notice because it is extremely difficult—I am not going to say it is impossible—to identify the particular lien.

Certainly, once it's cut up I don't think it can be done. At one time I had suggested that maybe we ought to prohibit the breaking up of a caucus for a couple of days to give time for the seller to get his money. He could still identify his meat.

Any of these options, any of these lien provisions—of course, we've got to recognize in the first place they do restrict the credit of the processor. The processor obviously can't get as much credit if we have those provisions in there as he could otherwise, or it may cost him a little more.

I think we must not overlook the fact in passing this kind of legislation that whatever costs is involved—and there is cost involved—whatever cost is involved is going to be paid by the producer. It is fallacious thinking, well, I won't talk about yesterday's action on the floor because there was a lot of voting that was not based upon thinking yesterday.

Anybody is just fooling themselves when they think that you can add costs to the packer and get just as much money for the producer as you could before you added the costs.

Packing profits aren't large enough to justify that. Those costs are going to be passed either to the consumer or to the producer and I grant that if you have a very strong demand for meat as we had about 3 years ago, you pass it on to the consumer.

About 90 percent of the time they are going to pass back to the producer and I think it would be rather ironical for this committee to pass out some legislation here that simply put an unreasonable burden on that producer to cure something that didn't amount to as much as the burden that went with it.

Mr. THONE. Mr. Chairman, I agree with you. I was with you all the way yesterday. I preface my remarks here because I really want to have your attention on this.

Mr. POAGE. You have it.

Mr. THONE. Central to the issue is this section, that is the so-called lien, it is controversial. Chase Manhattan Bank has gotten hold of me a couple of times. They are very concerned. I am sure they are

sincere, feeling that we could overreact here and in the long haul hurt the very people we are trying to help.

Frankly, 99.9 percent of this legislation is for those producers out there in Nebraska. Many of my constituents, as you know, Mr. Chairman, got caught in that American Beef situation. Understandably, they are very upset and rightly so.

But, if we do everything in this bill that I hope we can do with prompt payment and solvency, bonding and preemption and I'd like to go a little stronger on preemption that I think we have gone so far, Mr. Chairman.

I think we ought to preempt the various payment aspects of this bill as well as bonding, because I think that proliferation again, as you say, is only going to add expense and ultimately going to come out of the pockets of our producers.

If we don't establish some sort of a lien provision here for our sellers I don't see that we've done them much good in this whole area, to be very candid with you. The only section that addresses the problem of American Beef with our producers is this lien section.

I noticed our good friends from AMI who are in the room here hit the issue clearly. I can't argue with their argument on this, but I think there is an overriding consideration here.

We won't get any support for this bill in my country, Mr. Chairman, unless, we give a lien to the sellers of this livestock.

Frankly, it bothers me a little that the industry people feel that they have to have a lien on livestock which they have not paid for.

I know that the banks are in the limelight quite a bit on their whole credit policies. It's all over the newspapers.

I talked to Mr. Bierman yesterday at some length as to how this would affect financing to some packers. He concedes that it will, in some instances. There's no question about that at all.

So I guess it is a matter of priority here, as I see it.

Frankly, my priority would have to come down to the producers who are not sophisticated sellers in many instances. When you talk about the livestock chain as contrasted to the meat chain then I think frankly that the guts of this bill is right here in section 8.

We have some hard choices to make as we frequently do. I think we have to have a strong lien section.

I don't know if I totally understand option 3. I know what it is meant to address, but as of now I would like to see both options 1 and 2 remain in this bill. If that is not the consensus of this committee, I would certainly opt strongly for option 2.

I could go on and on, Mr. Chairman.

Mr. BEDELL. Are we going to include in this legislation bonding requirements?

Mr. POAGE. We have not reached that.

Mr. BEDELL. I don't find it here. Is it in this bill?

Mr. IMHOF. I'm sorry, I missed your question.

Mr. BEDELL. Bonding requirements, are they in this bill?

Mr. IMHOF. They are in the first section on the front page of the bill, yes.

I might say to Mr. Thone that the pre-emption provision about which he was concerned is in the very next section of the bill on page 9.

Mr. THONE. Has it been changed to cover the payment aspects as well as the bonding?

Mr. IMHOF. Yes; it has.

Mr. THONE. That's fine.

Mr. IMHOF. That section was added in addition to what you had in your bill.

Mr. BEDELL. Have you already discussed the bonding requirement?

Mr. IMHOF. Mr. Thone just addressed it. We had not quite reached it.

Mr. BEDELL. May I know what was decided because I think it makes some difference in the lien requirement? What was the feeling of the committee in regard to bonding requirements?

Mr. POAGE. It was the Chair's understanding that the committee favored the bonding.

Mr. BEDELL. What are those bonding requirements?

Mr. HIGHTOWER. Would the staff have the section for Mr. Bedell?

Mr. IMHOF. We have reference to page 1 of the committee print.

I wonder if you have a copy of the statute, Mr. Bedell?

Mr. BEDELL. Are we requiring the bond that covers 2 days' kill or 1 day's kill or a given amount?

Mr. IMHOF. I believe the amount of the bond is left to the discretion of the Secretary of Agriculture. It is not established in the statute.

Mr. BEDELL. Is that the way it is now?

Mr. IMHOF. Yes. The only change would be that the packers would be included in the category of people who would be required to obtain a bond to do business.

Mr. BEDELL. Let me echo Mr. Thone. My people out there are not going to be very pleased with this legislation unless we specifically specify what we have in mind in terms of bonding.

Mr. POAGE. We have heretofore authorized the Secretary to require bonds of these auction rings, for instance. We have authorized him to require bonds in certain cases. He has exercised that authority.

The present law does not give him authority to require bonds from packers for them to indemnify sellers to them.

Section 1 confers that authority on the Secretary. The same kind of authority has been conferred on him at an auction ring. It has been exercised so we can't say the Department hasn't exercised it because they have, just as far as the present law authorizes it.

What we do in section 1—you lawyers check me if I am wrong—what we do in section 1 is to extend that authority that he now has so that he would have the same authority to require bonds of packers as he has in the auction ring.

Mr. THONE. The statutory language is that he may require reasonable bond?

Mr. POAGE. Yes. He has required that where he had the authority to do it.

Mr. THONE. He requires a bond on 2-day kill; is that right, Mr. Bierman?

Mr. IMHOF. If I might read the present provision it might clear this matter up.

It would not be on a 2-day kill, but 2 days is correct. If I might just read this provision in the regulation.

Mr. Thone. Please.

Mr. Imhof. I am reading from regulation 201.30. It says: "The amount of each bond", and this is from marketing agencies and dealers at the present time because the statute does not presently include packers. "each bond shall be not less than the multiple of $2,000 above the average amount of sales of livestock by a market agency or purchases of livestock by a person buying livestock as a market agency or dealer or both during a period of 2 business days, based on a total of such business days, and the total amount of such transactions in the preceding 12 months or in such substantial part thereof in which such market agency or dealer did business, if any, provided the bonds above $26,000 shall not be less than the next multiple of $5,000" et cetera. The formula goes on, but that essentially is that Mr. Thone is correct. It is based on 2 days.

Whether that would be reasonable in the case of a packer I am not prepared to say. Perhaps Mr. Bierman could address that.

Mr. Bierman. As Counsel mentioned, our current bond requirements are for 2 days' purchases up to $50,000 and 10 percent of the amount above $50,000.

If this legislation is enacted and the Secretary is authorized to require bonds of meat packers engaged in the purchase of livestock, then we would necessarily have to hold some hearings and find out what is a desirable and reasonable amount of a bond needed to protect livestock producers.

At this time, I can't say what that would be.

Mr. Thone. If I may, Mr. Chairman, I would suggest to Mr. Bedell that this is an adequate position. I don't believe that we will want to spell that out in the statute, because there might be difficult considerations for packers and the other people. I don't know. Maybe you feel strongly about this. You certainly have the authority to specify the bonding provision with exactness, but I don't think it would be wise.

Mr. Bedell. I realize that argument but the problem I have is that I think we have seen many cases where both you and I have not been real pleased with the actions of the Department in various areas.

I feel fairly uncomfortable whenever we turn things over to the Department for them to make the decision.

If we have that option then we could come back with the legislation.

Mr. Thone. All of the experience we have had with the Packers and Stockyards Administration and Mr. McLean and his people, we have had nothing but total cooperation. They have done an exemplary job with the tools they have available.

As we indicated the other day, they lack some of the necessary tools and we are giving them the tools.

Mr. Bedell. I have no argument with that.

Mr. Findley. Mr. Chairman, in reading option 3 the key words seem to be that the livestock shall be held by such packers in trust for the benefit of sellers until full payment has been received.

This seems to some extent the ruling of the district court. Is there some reason why we could not say directly that title shall not pass until payment is made or payment is received? It would seem to me that that is less ambiguous and would be a better approach to the problem.

What are the problems that would flow from such a provision of law?

Mr. Bor. One of the reasons we did not mention title was that that raises the issue of who has the risk of loss when the livestock is in the hands of the packer. If we did mention title, I think we would want to say that the risk of loss, however, would be at the risk of the packer rather than the livestock owner, who had lost dominion over the livestock.

Mr. Findley. Is that the only objection to that approach?

Mr. Bor. The other problem was the problem that you run into when the livestock is being sold.

As Mr. Poage had pointed out earlier, livestock remains in the hands of the packer for a relatively short period of time. The livestock is slaughtered, and the meat products are sold in a prompt manner. What we have done here is provide that regardless of whether the packer has livestock, meat products, receivables, or cash proceeds—all are held in trust for the benefit of the unpaid seller.

If we are dealing merely with the question of title, then you run into the problem of title after the livestock has been disposed of.

Mr. Hightower. May I ask a question, please?

Mr. Poage. Yes.

Mr. Hightower. I am not sure I understand the business of holding in trust and the responsibility of a trustee.

Is there a conflict of terms between buyer and trustee and seller and beneficiary? Is there a conflict of terms? Can you be a buyer and a trustee, and a seller and a beneficiary?

Mr. Imhof. The thrust of the bill would be that a fiduciary in a sense would be the buyer or the packer.

Mr. Hightower. How about the beneficiary?

Mr. Imhof. Under the case for which this case was modeled, Mr. Hightower, it was the intent that the producer would be the beneficiary and the packer would be a sort of trustee having the beneficial ownership of the livestock until such time as he received payment, actual funds for his livestock.

Certainly we did not intend any conflict there.

Mr. Hightower. Buyer is usually used in connection with the term "own." Having bought you own.

Mr. Imhof. Once you have paid for it.

Mr. Hightower. All right. Here we are going to spell out that he is going to be a trustee. We want to be sure that the trustee has all of the responsibilities ordinarily required by law of a trustee.

Mr. Bor. We can make this clear in the committee report. It was our intent that under this option he, the packer, would be a fiduciary responsible to the unpaid seller or the livestock and the meat and the proceeds until he had made payment for the value of what he had acquired. This, we thought, would give protection to the livestock owner from claims from other parties.

Mr. Poage. I would like to make my own viewpoint clear. I am not trying to bind anybody else because anybody can make any suggestions they want to.

It seems to me that inasmuch as we have adopted bonding, we've adopted the prompt payment, we've adopted the solvency test, that we've given about all the protection here that we can afford to give.

All these things are costly and all of them are going to fall either on the producer or the consumer.

It seems to me we've given just about all we can. I don't think we gain very much by these lien provisions. I don't know what they get for you. You've got a bond. The packer is bonded to pay you. If that bond is good, you don't need a lien on anything.

Mr. HIGHTOWER. I think it came out in the hearings that a 2-day bond is probably not going to be adequate for the big packers.

Mr. POAGE. Well, we have the provision in here to make the payment. There is prompt payment here. If he fails to pay for it, then he becomes insolvent. We have a bond here.

Mr. HIGHTOWER. We have a 2-day bond.

Mr. POAGE. It covers 2 days; that's correct.

Mr. HIGHTOWER. Then we have the provision on prompt payment that the Commission would be able to make rules and regulations that would anticipate payment by mail which could be considered in more than 2 days.

I just believe that those two provisions alone would not cover it. We probably will need a certain kind of additional provision.

Mr. POAGE. Just how much help would that be?

There are not very many producers. In the American meat packers area you have a lot right now, but that's the first insolvency of that kind in 15 years, isn't it?

Mr. HIGHTOWER. I think so.

Mr. POAGE. There are small ones, of course, but you do not get very many losses on this.

While we want to protect people from these losses, the losses are not very frequent. You have to pay for these other expenses every year.

It does not take many years to make this thing cost producers more than producers get. In other words, the insurance premiums are getting altogether out of line with the benefits you are going to get if you suffer a loss.

Mr. FINDLEY. Mr. Chairman, I agree with the chairman's comment. I think there is something to be said for entering into reform by stages. The bill without section 8 would constitute a considerable advance or reform. I would like to see us have a period of testing but maybe we will have to come back with some kind of lien provision.

The committee will be in business next year and the year after that.

I move that we strike section 8 from the subcommittee print.

Mr. POAGE. This would mean that we would eliminate the lien provisions.

Mr. FINDLEY. Yes.

Mr. POAGE. Anybody want to be heard on that?

Mr. THONE. Yes.

Mr. Carter. I just want to clear up something. There is some confusion, I think, on the three options.

Option 1 is the anti-incumbents; option 2 is the priority lien period.

Come to option 3. Would it be the intent of this option that the specific livestock products, or receivables, or proceeds would not have to be identified by the producer under this? Would you have that problem?

It seems to me that if we had to identify them specifically we would have mechanical problems.

Mr. CARTER. In case the packer had financial problems, he certainly would have to have some way of identifying what livestock was in his possession and what proceeds and receivables and inventory he was holding in trust.

So there would have to be some kind of accounting system developed so that could be ascertained.

Mr. THONE. Could we make it clear that that packer is the trustee for the seller?

Mr. CARTER. Yes. I gather that that is the real purpose of that section.

Mr. THONE. In effect it would do it, would it not?

Mr. CARTER. Yes.

This provision, I would assume, is designed to really put into the act the concept which the Court of Appeals had in its decision, that is the trust theory——

Mr. THONE. Let me argue a little with you on that.

We have an opinion down there from the Fifth circuit. That is a long way from flying it nationally or as you indicate even appeal it to the Supreme Court.

But, statutorily, here we could put into effect exactly what that circuit court down in Texas did, could we not, by option 3?

Mr. CARTER. Option 3 is to accomplish that purpose.

Mr. THONE. You've been down there, Mr. Carter, for 25 years interpreting these laws.

Of option 1, 2, or 3, would you strongly prefer one of them? If you had to defend it legally, would you prefer option 3?

Mr. CARTER. I am not in a position to express an opinion on which option is best.

Mr. THONE. From your long experience and legal work on this, is option 3 totally administratable and could it be effective for the producer along the lines that I have discussed before, in your opinion?

Mr. CARTER. From the standpoint of the administration of it I think it is going to be mostly the burden of the packer and whoever is financing the packer to be certain that there is some type of accounting system that would provide for the ascertainment of what is in trust. So, from the standpoint of the administration of the act, I wouldn't think it would be much of a burden for the administrators.

In option 1, you don't get to the question of whether a statutory lien is or is not needed nor do you get to the question of what happens in a trust, because one makes it unlawful to encumber initially and then provides that any contract or arrangement in violation of that is unenforceable.

So you are cutting off this area of financing. You are cutting off the availability of the unpaid livestock, and receivables, and inventory.

It's unlawful to be encumbered. If you do encumber it then it is a useless task because you cannot enforce it.

Mr. THONE. Do you think you should be able to encumber something you haven't paid for?

Mr. CARTER. That's the thrust of this provision.

Mr. THONE. You should not be. I think it's sound. I really do.

The only other thought I have on it is this: I oppose the Findley amendment to strike because I don't think we've done too much for

that producer out in northeast Nebraska in this whole legislation unless we give him this type of protection here.

As Mr. Poage says you have the packer bonding but as Mr. Hightower points out it covers 2-day kill which is not enough if you have a bankruptcy, and we've had 167 of them in the last 15 years, as I recall.

I think that the producer out there is looking for this type of specific protection if he sells his livestock to a packer who goes into bankruptcy.

I don't think the bill gives him much. It gives him some, Mr. Chairman, but not all he deserves.

I would then go for option 3 with some clarifying language in the report. I think it's probably the most practical of the three options.

Mr. POAGE. I don't want to confuse the question. Maybe it will confuse it, but it seems to me that maybe we ought to determine, if we're going to put these kinds of things on, are we going to do anything to relieve the burden on the packer—and I think we are putting a substantial burden there—I question whether the burden is worth the cost or not, but should we then consider the question of making the purchaser from the packer pay?

The packer comes in and says—and I think with a good deal of merit—"We can't go through all of this and still we don't get payment. We can't get prompt payment from the chain stores."

Now it's true that no one walks out of the chain store with a piece of meat without paying for it. The store has cash, but they don't make payments to the packers, so the testimony was, for at least 3 weeks or a month after they receive the meat. So they ride that.

That runs into a substantial amount of interest over the year. We ask why don't the packers require us to do this?

Some individual packer is going to say, "Yes, I will extend interest." When we ask packer A why he extends this credit and why he does not require Safeway and A. & P. to pay cash, then he says, "I can't because packer B would extend the credit in order to get my business." So we say that that condition occurs over everybody's business. He says,

> Yes, but under the Packers and Stockyards Act and under the consent decree and under the general anti-trust laws, I cannot talk to packer B and I can't decide upon a general policy with him and we cannot come to any agreement as to the terms which we would extend because that violates the antitrust law.

The result is that his credit becomes more and more a matter of whipsawing. It puts the packers in the position of needing a substantially larger amount of credit than they would have to have otherwise.

The question rises as to whether or not we try to impose some limitation on the chain stores or any other purchasers—I don't simply want to say the chain stores—but they are the biggest purchasers of this meat.

Do we want to require the purchasers of this meat to pay? They've already got their money. They get their money whether it's a restaurant or whether it's a chain store, they get their money when the meat leaves their place.

But they ride the packers for several weeks. Do we want to try to give any relief there? If we're going to be equitable and it seems to me

we have to be, and if we do involve ourselves, of course, in still further governmental interference in the realm of business.

Mr. HIGHTOWER. Mr. Chairman, not to belabor the point, but let me say this. The whole purpose is to try to bring equity to the producer and to try to guarantee his money and it seems to me that everybody in business, the meat-processing business, can benefit from the float except the producer. And all we are trying to do is push it back one step and tell the packer that he had better pay.

If the packer wants to work out a credit business with his wholesaler and consumer or whatever, then let the ordinary course of business go. However, the producer has nowhere else to go.

Mr. POAGE. That packer cannot work it out because we said he couldn't. By law we have prevented him from doing it.

If we took away all of the legal restrictions, I would say that that is exactly right. But we've already made it a criminal offense to talk to packer B. He can't get together like farmers might get together and other men get together. They all have their right to do it, but the packers haven't. They are prohibited by law from getting together on this.

Mr. ENGLISH. Mr. Chairman, we are here talking about the question of free enterprise.

Mr. POAGE. Yes, we are.

Mr. ENGLISH. If we have one packer who says he is going to extend credit, all the chain stores will then want to buy his product. That situation may also develop with some of the smaller packers. The big ones will use the law and come back to the chain stores and say, "Look, there's no way that my profit margin allows me to operate in this manner. Therefore, I will demand prompt payment because of this law."

We have seen that take place. Whenever one of these laws comes out it's awfully convenient to have it used that way.

I think that will happen with a lot of the big packer companies, but a smaller packer will try to undercut him and say in effect, "What we're going to do is extend you credit for all of this meat that you are going to buy from us." He probably will not be in business very long if he is operating on a small profit margin.

If he has a big profit margin, then he may have something to play with, but I don't feel that these large profit margins widely exist, particularly with some of these small packing companies.

I think the opposite is going to happen. The big one would love to have the excuse to go to A. & P. or somebody else and say that they have to get prompt payment.

I think all of them would jump on the bandwagon.

Mr. THORTON. Mr. Chairman, I must apologize that I was not here during the time of the hearings and therefore may not have information that is available to other committee members.

I should like to say this: I do agree with the chairman's views especially as to options 1 and 2. It seems to me that they would impose additional costs on the process.

However, I do have some questions as to whether option 3 would have these penalties attached? In fact, option 3—and this is straining my recollection a bit back to Uniform Commercial Code days—but it seems to me that it's pretty close to an effort to restate what

the law probably is in regard to some of these transactions, at least it has been indicated that this is a restatement of what the law is in the fifth circuit.

It does seem to me to be basically fair but I have some specific questions that I would like to know about.

What is the effect of this trust? If a later sale is made by the fiduciary to a third party, is the result that whatever goods are in the hands of the third party would flow through a bankrupt fiduciary to the beneficiary?

Mr. IMHOF. That is the intention of the provision, yes. I believe that is the result that is achieved in the *Samuels* case in the fifth circuit.

Mr. THORNTON. That seems fair to me.

Is it your expectation that this is the body of law that is likely to prevail or not? Can you address that?

Mr. IMHOF. Without the statute, sir?

Mr. THORNTON. Yes.

Mr. IMHOF. That is up for garbs, I understand.

Mr. BOR. Mr. Thornton, initially the court of appeals in the fifth circuit in the case of *In re Samuels & Co.* interpreting the Packers and stockyards law came up with a position that is essentially option 3. They said in effect that the Packers and Stockyards law superceded in their mind's eye the provisions of the Uniform Commercial Code.

Mr. THORNTON. That was the question I had.

Mr. BOR. A petition of certiorari was then filed with the Supreme Court and the Supreme Court overruled the fifth circuit, saying that after reviewing the packers and stockyards law they disagreed with the position of the fifth circuit, and that in fact you had to look at the local law to determine what were the rights of an unpaid seller of livestock.

So the case went back to the fifth circuit and the court then examined common law and the uniform commercial code and instead of following the trust theory, it said in effect that title never passes when you have a cash sale where the buyer has not made payment for the purchase price of the livestock.

It stated that the Commercial Code in their view had not changed the common law, and reached the same result that it reached the first time in protecting the rights of the unpaid seller but by a different route.

That decision now again is subject of a petition for rehearing and we don't know how the court will ultimately rule.

But we thought that examining these two alternatives, the way the court in the fifth circuit first came out and the way the court came out the second time, it would perhaps make more sense to handle it as was done in option 3 by saying that the packer was a fiduciary holding in trust the livestock or the proceeds which he realized from the sale of the livestock products—all for the benefit of the unpaid seller.

Mr. THORNTON. That helps me considerably. I must say I wish I had the time to understand more fully the differences.

But, as I understand it, this would be an effort to establish by statute an overriding rule of priorities which would prevail as against

Uniform Commercial Codes and other laws that might result in varying interpretation throughout the United States.

Mr. IMHOF. That is exactly correct, Mr. Thornton.

Mr. POAGE. Mr. Bedell has a question.

Mr. BEDELL. I need to understand the difference between numbers 1 and 3. As I understand it, number 1 says that persons cannot give a lien on any property that he has not yet paid for and he doesn't own. Is that correct?

Mr. IMHOF. Yes.

Mr. BEDELL. Can't he ship that?

Mr. BOR. He could ship the goods to a customer but what it says is that if a bank extends credit and obtains a lien, then that lien will be held to be unlawful and unenforceable.

Mr. BEDELL. In option 3 he could neither get a lien nor shipment to a customer. Is that correct?

Mr. BOR. No. He could ship the livestock or meat products to a customer, but when he did so, the accounts receivable and the proceeds that he received would be held in trust for the benefit of the owner of the livestock.

Mr. POAGE. All right. Maybe we can narrow this down. I think we have discussed it thoroughly.

All those in favor of the Findley motion to strike all three of these options will hold up your hands.

Opposed?

There being two ayes and 4 nays the motion fails.

Does anyone want to propose any one of these options?

Mr. ENGLISH. I would like to move the adoption of option 3.

Mr. POAGE. It has been proposed that we approve option 3.

Mr. THONE. Mr. Chairman, very briefly let me ask unanimous consent, so there is no confusion on this, for this.

In line 14 in option 3 it reads: "When payment is not made for the livestock and that such arrangements are contrary to the public interest."

I would like to add a proviso: "Provided, however, that an invalid payment instrument shall not be considered payment." I would like to have unanimous consent to put that in. There have been some court problems, as I understand it, where they give a bogus check or something and then they are out from under it because they did supposedly make payment.

It's a technical change.

Mr. BOR. Mr. Thone, as we had read this provision we had suggested an additional sentence in paragraph 5. It would say that payment would not be considered to be made if the livestock owner had received a payment instrument which had been dishonored, or something to that effect.

Mr. THONE. Yes. Where was that again, Mr. Bor?

Mr. BOR. This would be an additional sentence at the end of paragraph (b) on line 23.

Mr. THONE. I missed that. That's essential, I think.

Mr. POAGE. I think we agreed on that, didn't we?

Mr. THONE. It passed by me, Mr. Chairman.

Mr. POAGE. If there is no objection we will consider that inclusion in option 3.

Mr. English moved that we adopt option 3. All those in favor of that say, "Aye."

[Chorus of ayes.]

Mr. POAGE. Those opposed?

The ayes have it. We will adopt option 3.

Mr. IMHOF. Mr. Chairman, just to insure, in our earlier discussion, I think the committee decided to include proceeds with meats and receivables in one of the options. I assume it is in all three options.

Mr. POAGE. We've adopted three and we've put the proceeds in option 3, so it's in there.

Mr. IMHOF. Thank you, Mr. Chairman.

Mr. POAGE. Now let us see if we can hastily finish this up. Maybe we could have save a week or two.

Let's proceed with section 9.

Mr. IMHOF. On section 9, on page 9 of this bill, Mr. Chairman, I believe we discussed this briefly earlier with Mr. Thone.

It is a preempted provision for both the bonding and the prompt payment provisions of this bill from all State requirements for purposes of people who are subject to this statute.

Mr. POAGE. Is there any objection to section 9?

Mr. HIGHTOWER. May I raise the question about whether or not it is desirable to preempt where some State would have a severe bonding provision and prompt payment provision?

Mr. THONE. I would strongly urge that it is.

Mr. POAGE. If there is any purpose in the world of preemption, it goes both ways because you have that same diversity regardless of whether it goes up or down.

All those in favor of approving section 9 say, "Aye."

[Chorus of ayes.]

Opposed?

Mr. POAGE. We have approved section 9. We will pass to section 10.

Mr. IMHOF. Section 10, also on page 9 of the bill, Mr. Chairman, would authorize the Secretary of Agriculture to conduct a 2-year study on the problem the chairman discussed a few minutes ago, the payments and the specific promptness of payments by retailers and others to packers of meats.

The Secretary would have to report on an interim basis after the first year of the study and present the final report within 60 days of completion of the 2-year study as to what his findings were and as to whether he recommended any legislation to deal with any problems he might encounter during the course of the study.

Mr. POAGE. Of course, in keeping with my general policy, I think that is just a total waste and worse than nothing and jeopardizes the whole bill.

You've left it blank as to the amount of money we are to put in there but if we don't put this section in, we will not have any additional expense. If you put this section in, you bring this into the budget situation and I think that the best way in the world to kill this bill is to bring in some fool study.

Mr. HIGHTOWER. I move we delete this section.

As I understand the Budget Act, we could not consider this until after March 15.

Mr. POAGE. That's correct.

Mr. IMHOF. I believe the situation is that the appropriation could not be made but that the committee would have to report the bill out with such a provision in it prior to the 15th.

Mr. POAGE. The motion has been made that we strike the section.

All those in favor of striking the section will say aye.

[Chorus of ayes.]

Those opposed?

Being unanimous, we will strike that section.

Now we have section 11.

Mr. IMHOF. That's your standard separability clause preserving the provision which is not stricken down by a court.

Mr. POAGE. Is there any objection to that section?

The Chair hears none.

The Chair wants to repeat, and I recognize this is a mere formality, but I feel that we ought to consider moving some funds into the hands of these packers as well as moving funds out of their hands. I feel that we ought to consider a section requiring prompt payment by the purchasers from the packers.

Mr. SEBELIUS. The day after receipt?

Mr. POAGE. There ought to be some provision. I'm not sure. I just want to put this through the committee. I'm afraid that is only my own opinion.

Let me see if I can put it this way:

All those in favor of trying to work out a section that would bring in receipts from the purchasers to the packers will hold up your hands.

There are four.

Those opposed?

The CLERK. There are two.

Mr. THONE. It grieves me a bit. Maybe I should have hollered sooner because I do think it is going to delay us.

Mr. POAGE. I know it delays us.

Mr. THONE. I want to defer to the chairman. He has been very fair on this bill. That's why I sat here and did not vote either way.

Frankly, when you come back with your recommendations I think I have made up my mind totally on those and I would strongly oppose getting to any priority on the end of this thing.

I think these are sophisticated situations.

Mr. POAGE. If the majority is going to oppose anything, there is no use delaying the bill by a week or two simply to come back here and go through the procedure.

Mr. SEBELIUS. Let's take a look at it.

Mr. POAGE. That suggestion is fair enough.

Mr. SEBELIUS. We'll take a look at it in the full committee.

Mr. BEDELL. How soon to the full committee?

Mr. POAGE. Next week maybe.

Mr. BEDELL. I would like to have a few days to look at this. I would like to get some input from some of my people and some of the packers so we might be more aware of any possible potential problems with the legislation.

Mr. POAGE. I fully agree that we should do that.

However, we will have the opportunity in the full committee to present anything of that kind.

It seems to me that getting a meeting of these committees is a major undertaking.

Mr. BEDELL. I would hope that we would have a week before it went to the full committee.

Mr. SEBELIUS. You will have more than that. We only have 3 days next week so it would have to be the week after next.

Mr. THONE. The next committee meeting is at 10 o'clock February 24. I would hope we could bring it up that day.

Mr. POAGE. We will try to bring it up that day.

Mr. FINDLEY. May I bring up another matter?

Mr. POAGE. Is there a motion?

Mr. THORNTON. I move we approve the bill as amended and report it to the full committee.

Mr. POAGE. The motion has been made that we report the bill with the recommendation that it pass as agreed in the subcommittee and the staff will prepare another committee print—there are only a few items to be changed—to present to the full committee.

All those in favor say aye.

[Chorus of ayes.]

Those opposed?

[No response.]

Mr. BOB. Mr. Chairman, would you like to report to the full committee the revised committee print or would you prefer to report the bill H.R. 8410 that had been originally introduced with the amendments adopted by the subcommittee.

Mr. POAGE. I think that would be good.

If you prepare the committee print so the committee can understand it, I would appreciate it.

We will report the bill, the original number that was introduced, but prepare a committee print to enable the committee to understand what we have for them.

Mr. Findley?

Mr. FINDLEY. The Packers and Stockyards Administration has been engaged in something I was not aware of until very recently.

There is a program under which percentage commissions are being outlawed. I don't know whether other members of the subcommittee are aware of this or not.

It came to my attention because a sale barn in my hometown wanted to change the fee for handling market hogs. They wanted to continue the per head charge but raise it somewhat.

They were told by the packers and stockyards that if they did that, they would have to discontinue their percentage commission charges for all of their types of animals.

Rather than do that, they decided not to sell hogs anymore, which has resulted in the loss of markets for the farmers of that area.

I have drafted a bill which would prohibit the administration from outlawing commission rates. I hope that isn't necessary. I wonder if we could hear from someone with the administration, if they could give some assurance that they would permit commission rates, I think there is something to be said for top limits per head for sales figures, but from a standpoint of the producer, when hog prices are down or cattle prices are down, he would appreciate a little bit lower fee from the commission house.

When prices are up he doesn't mind a little higher fee being charged. Can we hear from someone from the administration?

Mr. POAGE. You can hear from them if they want to get into it.

The Chair has no objection to anyone offering a suggestion, but I realize that nobody from the Department is here with any understanding of that.

Mr. FINDLEY. I did speak to Mr. Bierman about it.

Mr. POAGE. We would be glad to hear from him if he wants to make a comment.

Mr. FINDLEY. I have heard informally that the administration is considering permitting a continuation of commission rates with a top and bottom limit per head. That seems to me a very rational way to proceed.

Mr. BIERMAN. We had a number of court decisions which have said that commission rates should be on a per head basis to be fair and reasonable.

When we posted a couple of thousand auction markets about 15 or 20 years ago, many had percentage rates. We did not require that they change those percentage rates. We are not at this time requiring the change unless they are asking for an increase in rates.

Generally, under percentage rates when prices are going up there is more income to the market, but there have been no requests on the part of the markets that the rates be reduced.

However, when the price of the livestock goes down there have been requests for an increase in the percentage rates. This has resulted in a continuing upward pressure upon commissions.

We would like, of course, to see that all markets make an adequate amount of money so that they can maintain good services and provide adequate facilities to their areas.

But they can't do this with the fluctuation of the high and low prices. So we are now taking the position that if a market is on a percentage rate and it asks for an increase in rates because prices are low, then it should convert to a per head rate.

This would be a rate that would provide it with sufficient income to permit it to make money and provide the proper services.

Mr. FINDLEY. The problem is that if you wanted an increase in any category then they have to drop their percentage rate in all categories.

Mr. BIERMAN. Ordinarily it's straight across the board. I believe in this particular instance there was one category on a per head and one on a percentage rate. Since your discussion with us, Mr. Findley, we have been back in touch with them about that.

Mr. FINDLEY. Mr. Chairman, may I ask if other members of the subcommittee have encountered similar complaints?

[No response.]

Mr. POAGE. The committee will stand adjourned.

[Whereupon, at 12:25 p.m., the committee adjourned.]

# PACKERS AND STOCKYARDS ACT OF 1921, AS AMENDED

THURSDAY, FEBRUARY 19, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
*Washington, D.C.*

The committee met at 10:10 a.m., pursuant to notice, in room 1301, Longworth House Office Building, Hon. Thomas S. Foley (chairman) presiding.

Present: Representatives Poage, de la Garza, Vigorito, Jones of North Carolina, Jones of Tennessee, Melcher, Mathis, Bergland, Bowen, Rose, Litton, Richmond, Nolan, Weaver, Baldus, Krebs, Harkin, Hightower, Bedell, McHugh, English, Fithian, Thornton, Wampler, Sebelius, Thone, Symms, Johnson, Peyser, Jeffords, Kelly, Grassley, Hagedorn, and Moore.

Staff present: Fowler C. West, staff director; Robert M. Bor and Hyde H. Murray, counsels; William A. Imhof and John E. Hogan, associate counsels; L. T. Easley, press assistant; John Baize and Alan Gray, staff consultants, Subcommittee on Livestock and Grains; Jerry Jorgensen, staff consultant, Subcommittee on Department Operations, Investigations and Oversight; Glenda Temple and Susan Bell, staff assistants.

The CHAIRMAN. The next matter to come before the committee is the bill H.R. 8410, to amend the Packers and Stockyards Act of 1921, as amended, and for other purposes.

The Chair recognizes the gentleman from Texas, the chairman of the Subcommittee on Livestock and Grains, Mr. Poage.

Mr. POAGE. Mr. Chairman, this bill attempts to do what we have tried to do for a great many years and have never been able to come to an agreement on. We think that we have basic agreement now.

Certainly there will be amendments offered this morning. I imagine that some were expressed during the hearings in the subcommittee and some will be new.

Frankly, I can see some items here that I believe are going to cause trouble.

Basically what this bill does is to attempt to give some protection to those who sell livestock to packers. Packers is defined in a broad sense. These are not what we normally know as packers. They are others who buy cattle which will ultimately go to the slaughterhouse.

The first thing it does is to provide for bonding. That is the basic thing we have talked about for years. There have been those of us who felt that packer bonding would incur more cost than benefits. Anyone can make a logical argument on that.

Obviously there are only two places that the cost of bonding or any of the other provisions could be paid. One of them is from the producer and the other is from the consumer. There is not anybody else who can pay it. It cannot be paid by the packer. It will be moved depending upon the market.

At the present time the market for livestock is very weak. Obviously the cost will fall on the producer.

When there is a strong demand for meat, obviously the cost will be paid by the consumer.

I think we are kidding ourselves and trying to kid the public if we assume that these costs are not going to be moved either backward or forward. So whatever costs there are here we must recognize are going to be paid at the present time by the producer. In a short market they are going to be paid by the consumer.

The question that you must decide is whether the benefits are greater than those costs. The subcommittee decided that the benefits were greater than the costs and that the costs were not going to be rather small for the volume of meat that is handled.

One of the most unfortunate features of this is that the cost of bonds for a large packer is going to be much smaller in proportion to the amount of meat he handles than the cost for a small packer.

Smith and Company, Wilson and Company, and Armour and Company are not going to have to pay very much for a bond. Their credit is pretty good.

However, the outfit that is killing relatively few cattle could have to pay pretty high for a bond.

On the other hand, it is recognized that the chance of loss and the chance that the seller takes when he sells to this relatively small and relatively weak packer is much greater than it is when he sells to the larger companies. That is one of the unfortunate things which we cannot change by passing a law. The risk is greater and the bond would require more.

The first section takes care of the bonding.

We have several sections here that are purely mechanical. They deal with definitions. They simply change the mechanics.

The next provision seems to me to be the most helpful and the best provision of the bill in providing for prompt payment.

The CHAIRMAN. Would you yield for a question?

Mr. POAGE. Yes.

The CHAIRMAN. The present act, as I understand it, gives the Secretary authority to require bonding for dealers and market agencies. What the subcommittee has done, then, is to give the Secretary additional authority to require bonding for packers. Am I correct?

Mr. POAGE. Yes.

We have had that bonding for a good many years in regard to the auction markets. Frankly, it has worked out very well.

We used to suffer considerable losses on those auction markets. I do not know of anybody who has had any auction market losses recently. There may have been some, but I am not personally familiar with any.

It has worked very well. It has not added so much to the cost as to make it impractical to use the auction markets. They are still flourishing and are providing a large part of the marketing service.

They are subject to the bonding provision. We simply extend the bonding provision backward through the packing houses.

The CHAIRMAN. I would like to ask one other question, if I may. Does this bill provide that the actual requirements of bonding be prescribed by the Secretary in regulations?

Mr. POAGE. That is right.

Mr. MELCHER. Will the chairman yield on that point?

Mr. POAGE. Yes.

Mr. MELCHER. What does the bond require in terms of day's kill?

Mr. POAGE. We have not set out the requirements in the bond. We simply have given the Secretary the authority to require such a bond.

What I was just about to get to is this: I think this is the most important section of the bill. We have the prompt payment provision.

That provision requires that a packer, including all those defined as packers, will make payment in cash unless there is a written agreement to the contrary between the packer and the seller.

We do not believe that we have the authority to deny a man the right to extend credit to a packinghouse if he wants to do so.

Personally, I have been pretty concerned about that because I had thought that all that would happen would be that the packers would come out. Whenever they would buy cattle, they would simply say, "Before we do this, you will have to sign this agreement that we will not pay for 10 days, 30 days," or whatever it may be.

I understand that we have tried that. We tried it in Texas, Oklahoma, and Nebraska, I believe. All of them have substantially this sort of provision which has been enacted by the State legislatures in the last 18 months.

It is my understanding that the packers did start out with exactly that procedure that I thought they would, but they met with considerable opposition. Within about a month they dropped it. There is no practice of asking that the seller sign such a credit agreement.

Mr. GRASSLEY. Would the gentleman yield?

Mr. POAGE. Yes.

Mr. GRASSLEY. Was there any discussion with you or your subcommittee and the Department of what direction they might be moving, since there is no requirement in here about the size of the bond?

Let me explain to you my concern. The State law in my State has a minimum of a bond to cover 2 days' kill.

Would it be possible, in your judgment, that we might end up with a weaker Federal bonding provision than some States now have?

Mr. POAGE. It would be possible, but let me go on just a moment in connection with this prompt payment provision.

The bill does provide for payment in cash by the end of the business day after the cattle are delivered.

Mr. MELCHER. By certified check?

Mr. POAGE. A check. It does not have to be certified. This can be a check or a transfer of funds by telegraph or mail. It does not include a draft. A draft would not be a payment because a draft is not a cash payment. It is simply a commitment to make payment sometime in the future.

We do provide that the payment has to be made by the close of business the day after delivery.

This, I think, is substantially the same timing as Mr. Grassley's State has and other States have.

There has been some feeling that we ought to make it at the time of delivery. The problem there has been the physicial problem of the way in which cattle are delivered.

I understand in Mr. Grassley's State that most of the cattle are delivered to the packers' facilities and that the actual delivery takes place there.

In my part of the country they are not delivered to the packers' facilities. The packer takes them normally at an auction barn. He takes them at a ranch or something of that type. They are delivered a day or two later to the packer's grounds.

The question is then of making the payment. It is a physical problem of how to do it. The packers say they cannot give a check because the truck driver is usually not their agent but a common carrier. They cannot let him write the check for them. There has to be some time in which they can actually write the check.

I think we need to put in here that we would put the check in the mail.

It has been called to my attention that the present draft allows the use of drafts. I know that was discussed in the subcommittee. We had, as I understood it, agreed that we would not allow the use of drafts. Certainly we can take care of that with an amendment right now.

Using drafts rather than checks to make payments has been one of the things that has caused a great deal of trouble.

Mr. BERGLAND. Would the gentleman yield?

Mr. POAGE. Yes.

Mr. BERGLAND. Let me follow up on the point raised by Mr. Grassley.

The subcommittee did not stipulate what a reasonable bond might be, but it was clearly my understanding that a two-day kill would be construed as a reasonable bond by any standard. Certainly two days would be within the realm of reason.

While I do not believe we ought to stipulate that in the bill itself, perhaps it would clarify the matter if some language were inserted in the committee report.

Mr. POAGE. The bill itself provides for payment in 2 days.

It seems to me that if you are going to require payment within 2 days, then certainly the bond would in all reason follow.

Mr. BERGLAND. I share the concern of the gentleman from Iowa.

If we are going to have a two-day payment provision, it would be unreasonable to have a 12-hour bonding provision. That is my point. The bonding requirement ought not to be less than the delivery payment required by law.

Mr. BEDELL. Will the gentleman yield?

Mr. POAGE. Yes.

Mr. BEDELL. Could we add that to the committee report?

The CHAIRMAN. The committee could do that, but I think the proper way to proceed would be to first decide whether the committee is going to adopt the bill before debating particular provisions.

If the gentleman from Texas would yield, I would like to say that I personally think we ought to exercise some caution in establishing

the character of the bond. If we are going to give authority to the Secretary to require bonding of packers, as the law presently requires for auction markets and dealers, he should be allowed the equal flexibility in formulating regulations in both cases.

Mr. MELCHER. A 2-day bond for a 2-day kill simply does not allow an opportunity for the checks to clear.

If you deliver the cattle to the packinghouse and the packer mails the check that day, then it would be impossible for that check to clear. It would have to go, first of all, to the bank of the seller and then to the bank of the packer in 2 days' time.

The bonding provision simply says that the bond will be great enough to cover the packer and will not assure that that bond is great enough to cover the payment of the check when it is written on the bank of the packinghouse.

I hope there is some other provision in the bill that guards against the limitation of 2 days' bonding.

Mr. POAGE. There is what amounts to a lien. That is the next provision we should discuss.

I think this is the more controversial major provision of the three provisions. I think this would be the most controversial.

In effect, this creates a lien. It holds the meat for which payment has not been made. It creates a lien on that meat. You can call it a trust.

As I say, there is considerable question about the legal effect of this.

It is following the laws of several of the larger producing States that have enacted something of this nature.

Now there will be an amendment offered, as I understand it, to change the language so that it will more nearly meet the legal tests of what we already know about the law.

It creates an obligation to hold that meat so that the packer cannot put a lien on it. He cannot use it as a part of his assets in borrowing money as long as payment has not been made for the meat.

It gives the producer a threefold protection that he does not have today. It gives him a bond. That bond is in the hands of the Secretary to make it weaker or stronger. We do not attempt to write the details of the bond. But it does authorize bonding.

It does make a provision for payment. I will leave it up to the lawyers here because I know that the subcommittee contemplated that we were not considering drafts as payment. The bill now is so written that it does mention drafts, but it does not say that that is a form of payment. I do not think it is legally a form of payment unless you by law make it a form of payment.

Mr. KELLY. Does this bill contemplate that meat is to be covered by the bill or does it cover only the sale of livestock?

Mr. POAGE. It covers only the sale of livestock. However, it keeps a lien on the meat until it is paid for. That is my interpretation of it. That is what I want to ask counsel. I wonder if they agree that that is the correct interpretation.

Mr. BOR. Mr. Chairman, there are actually two separate aspects to this bill.

Mr. POAGE. There are three.

Mr. Bor. One aspect of it is to provide protection to the livestock producer when he sells the livestock to a packer.

As you indicated, there are three types of protection to livestock producers which apply under this bill. One is the bonding requirement. The other is the prompt payment requirement. The final provision relates to the imposition of a trust if the packer has failed to make payment to a livestock owner in a cash sale transaction and there happens to be an insolvency. This last provision would provide protection to the livestock owner in that kind of a situation.

Separate and distinct from this, the definition of packer has been changed. It includes a category that was not previously included. This category is a person who buys and sells meat, meat food products, or livestock products in unmanufactured form in interstate commerce.

The people who actually cut the meat were previously covered by the definition of packer. For the first time this bill would add another category, which is the jobbers and brokers of meat products.

The effect of including them in the bill is that it brings them within the ambit of another section of the Packers and Stockyards Act, section 202, which deals with unfair practices and unjustly discriminatory trade practices.

This would allow the Secretary to issue cease and desist orders to these jobbers and dealers as well as others who are covered by the act within the definition of the term "packer" and who engage in discriminatory and unfair trade practices.

The Secretary could issue a cease and desist order. He would be able to go to court to seek injunctive relief if the practices continued.

Also, it would give the persons adversely affected by the unfair practices recourse to the Federal courts. It would give them the opportunity to seek redress in the Federal courts for the actual amount of damages that they had suffered as a result of those practices.

Mr. Kelly. Does the lien or trust which is affixed to the meat go beyond the initial purchaser?

In other words, if the slaughterhouse slaughters it and ships the meat out, does the trust go with the meat to the purchaser?

Mr. Bor. The person affected by the trust would be the packer and the person who purchased the livestock. He would be holding in trust any livestock that had not yet been killed, the meat products in inventory and the receivables and proceeds that he might have derived from the sale of the products. The person who purchased those meat products from the packer would not be affected by the trust.

The packer, however, would be holding in the trust the accounts receivable that would be owed him from the person to whom he sold the meat products.

Mr. Kelly. This section 202 to which you made reference, does that really have anything to do with the initial purpose of this bill—to try to protect the producer in getting his money and avoid the American Packers sequence?

Is that not an entirely different ball game and subject matter and has nothing to do with the farmer or rancher?

Mr. Bor. Directly speaking, it does not. As an indirect matter it may have an affect.

Mr. Kelly. Is it going to affect his getting prompt payment?

I am getting one lawyer shaking his head in the negative.

Mr. IMHOF. It would not affect whether or not the livestock producer gets paid.

Mr. KELLY. That is another accomplishment and another subject. I am not suggesting that it is good or bad. It is something entirely different from the major thrust of the bill to protect the rancher.

Mr. BOR. That is correct.

Mr. KELLY. What section of the bill is that to which you referred?

Mr. BOR. That is the section which redefines packer.

Mr. IMHOF. Section 2.

Mr. KELLY. If the bill is submitted as amended by going back to the original definition of packer, the main effect would be to strike that aspect of the bill. That would be the only effect.

If we maintain the same definition of packer, that would be the only effect?

Mr. BOR. If you maintain the same definition of packer, you would be removing the jobber and the broker from the provisions that I discussed earlier.

Mr. KELLY. With regard to section 202?

Mr. BOR. Yes.

Mr. KELLY. But it would not in any way affect getting the rancher and the cattleman his money at the time of the sale of livestock.

Mr. BOR. That is correct.

Mr. IMHOF. There would be a question raised. If the packer were able to get his money from the people at another level, this, of course, would in turn affect the livestock producer. That would be the principal effect, I believe, in terms of your question.

The packer has to be paid. He has to have an accounts receivable that is worth something in order to protect the livestock producer. So if you have some middlemen operating insolvent, obviously you would have a problem there.

To the extent that you fail to cover the middlemen in this bill, you might, to some extent, jeopardize the packers' accounts receivable, which in turn might affect what is in this trust to protect the livestock producers.

Mr. KELLY. Does section 202 protect that?

Mr. IMHOF. Section 201.

Section 2 of the bill amends the definition of packer in section 201 of the act.

Section 202 is a list of violations which can be committed by packers.

The CHAIRMAN. The time rests with Mr. Poage.

Mr. DE LA GARZA. Will the gentleman yield?

Mr. POAGE. Yes.

Mr. DE LA GARZA. I would like to ask counsel if this trust is identifiable meat or volume of meat equal to that purchased.

Mr. BOR. It was not the intent of the provision to require that the packer maintain custodial accounts separate for each livestock owner. It was not the intent that he try to identify separately the livestock which was purchased from each separate cattleman or livestock seller.

Rather, it was the intent that he would hold in a pool, so to speak. his accounts receivable and his meat products in trust for the benefit of all unpaid sellers.

In order to make it a little more clear that what we are talking about is maintaining a trust account for all the unpaid sellers, we have prepared some technical amendments. They may be on your desk at the present time.

Mr. THONE. Will the gentleman yield?

Mr. POAGE. Yes.

Mr. THONE. We would also hope to make this point clear in the report language, this point that Mr. de la Garza just brought out.

The CHAIRMAN. I would ask Mr. Poage to yield to me.

Just so members might be aware of it. I understand an amendment is going to be offered to the bill to eliminate the draft possibility. Mr. Poage mentioned this earlier.

Speaking for myself alone, I have some serious reservations about the trust provision.

I think we are already offering a greater protection to cattlemen and stockmen in this bill than has ever been given before. Furthermore, I think much of it is very justified.

The main features provide for bonding requirement as well as for prompt payment requirement while specifying the kind of payment that may be issued. It gives authority to the Secretary of Agriculture to issue cease and desist orders against packers for practices that threaten the payment obligation, as well as to approach the Attorney General to seek temporary restraining orders or injunctions in Federal courts. Finally, it expands the authority of individual injured parties to seek damages in Federal court.

To additionally impose a trust on either the product or the proceeds of packers, I think, would create problems in many cases.

It is a standard financing procedure for the packers to seek credit with the banks based on their accounts receivable.

I do not want to see the problems of packers, especially the small ones, who already have difficulties in obtaining credit or reasonable interest rates, multiplied by the imposition of such a provision. I do not see any advantage in this for the livestock industry.

For that reason I personally intend to offer an amendment to eliminate the trust section.

Mr. THONE. Will the gentleman yield?

Mr. POAGE. Yes.

Mr. THONE. I agree with everything that you said except your ultimate conclusion on trying to eliminate the trust section.

I respect your judgment on it very, very much.

It is true that we do these things that you talk about. We put in the bonding, the cease and desist, the injunctive relief, and whatever.

However, I think it is fair to point out to the committee that I think we are doing the industry more of a favor when we put the bonding section at the Federal level than we are doing the producer a favor.

Twenty-six States or so have gotten into the bonding business and proliferated it something terribly. It is most unwieldy.

So it is the industry now that we are helping.

I could go right on down the line.

On the prompt payment matters, which are proliferated all over the place, there is a considerable problem in administrating that from State to State.

It comes down to the bottom line on this. For instance, there was someone in my area who was hurt in the *American Beef* case initially to the tune of approximately $900,000. We do not do anything for him that he has not already had done at the State level.

The CHAIRMAN. Will the gentleman yield?

Mr. THONE. Yes.

The CHAIRMAN. The bill has several different functions.

I agree there is a proliferation of bonding requirements. The bill reported by the subcommittee would create a preemption in favor of the departmental regulations on bonding. Only twenty-three States have developed bonding requirements. This is hardly a majority.

Mr. THONE. Those are the 23 major producers.

The CHAIRMAN. Yes.

However, I want to point out that the bonding requirements run against the packer. The combination of Federal and State requirements would be expanded actually in this bill by making all 50 States subject to the bonding requirement.

Mr. THONE. Mr. Chairman, I know that time is of the essence, but let me summarize what the Independent Bankers Association wrote to all of us yesterday. In fact, I think they say it a lot better than I can.

"IBAA supports the concept of a trust arrangement and believe it will prove beneficial to both producer and packer. The Association does not agree, as some contend, that the trust measure will put the packers out of business by cutting them off from their source of funds; i.e., bank loans. In fact, we believe the fiduciary route would enhance packers as a loan customer because this provision would force them to keep more active records of such things as what is owed, inventory, and accounts receivable."

So the Independent Bankers Association is coming down hard in favor——

The CHAIRMAN. We just received a report from counsel that it was not the intention of the subcommittee that this bill require a minute following of all the specific items that were received. Yet, that is just what the Independent Bankers Association, which does not represent the whole banking community on this issue, is saying would be a desirable function of the one provision. So the two do not match.

Mr. THONE. They go further.

I will not read the entire thing. I think you have a copy.

The Independent Bankers do strongly favor this trust.

More important is this: My producers feel that if they do not have this lien protection they will be in trouble. They have just gone through months and months of sorting out assets that were left for American Beef. Really we have not done anything for them in this legislation.

So I would strongly oppose any deletion of section 8.

Mr. PEYSER. Let me ask something so that I understand.

The purpose and thrust of the bill is that if I were a small cattle producer and you were a packer and I sell my cattle to you, then this bill, if passed, would guarantee that there would be a bond. It would say if the packer did not pay me within a certain amount of days, whatever is decided upon, then I am guaranteed that payment.

Do I understand the bill correctly?

The CHAIRMAN. If the gentleman will yield, I would respond by saying that I think we have to understand what a bond is. The bond is not an insurance program which guarantees the seller a specific amount of money in case he is not paid.

What bonding often does, as the gentleman from Montana has pointed out, is to cover a part of the residual obligations that might be incurred by an individual.

Bonding also tends to be a kind of watchdog since the bonding companies do not want to be forced to respond to the bond. This insures that certain practices are followed and that the solvency of the purchaser is such that the bonding company wishes to maintain the association on the bond.

Mr. PEYSER. Once again I am afraid I do not understand. The Chairman is usually very clear in what he says.

Do you mean that this is not an insurance bonding at all?

I do not know of any bonding that is not an insurance program.

Again I am the cattle producer. I go to you as a packer. You as a packer must have a bond, if this law were passed. That bond must have been purchased from somebody, a bonding company, I assume.

The CHAIRMAN. Let me try to make myself clear. If I do not succeed, perhaps counsel can help me.

The bond is written with respect to a fixed obligation. An insurance policy might consider a lot of contingent liabilities and names a beneficiary who would have claims against the insurance policy.

Mr. PEYSER. I am talking about bonding insurance.

The CHAIRMAN. Suppose the 2-day kill is set as a bond. It is possible that you would have sellers who were not paid within 2 days. Under the circumstances, the bond may be inadequate to offer a seller or a total number of sellers in a 100 percent response.

A bond is probably not going to be an iron-clad insurance guarantee. It puts the responsibility on a bonding company to respond in case of failure to meet obligations.

One of the important factors of bonding is that it places the bonding company in the position of being a watchdog for the operation.

Mr. PEYSER. I understand that.

Let's turn around a minute and suppose that I manufacture pencils. I am a small pencil manufacturer. Let's suppose that I sell to a middle man, a distributor or wholesaler, 100 gross of the pencils.

The wholesaler either goes bankrupt or does not pay me. The redress I have as a pencil manufacturer, as I understand it, is that I go to court and sue the individual or get whatever I can under bankruptcy proceedings.

Does a cattle producer today, without this legislation, have the same right that the pencil manufacturer has? Does he have the right to sue the packer and go to court?

The CHAIRMAN. Yes; he does.

Mr. PEYSER. Are we suggesting, then, that the pencil manufacturer be under Federal legislation. Are we suggesting that we should establish a Federal bonding procedure to protect every small business or major business in the country?

Mr. THONE. Will the gentleman yield?

Mr. PEYSER. I do not have the time.

The CHAIRMAN. Although I have expressed my reservations concerning the trust provision and intend to support the amendment to delete it, I favor passage of this legislation. I do, however, want to point out to those of you who do not believe that the measure goes far enough that if this bill is enacted, even without the trust provision, it will create a unique situation. For nowhere else in commerce are sellers afforded as many special guarantees of payment, conditions, and related jurisdictional assistance from regulatory authorities as are cattlemen and stockmen under this legislation.

As the gentleman points out, there is no assurance for a pencil manufacturer that if he sells to another corporation he is going to be able to insist on payment.

Yet, there will be very specific conditions in the Packers and Stockyards Act.

Though I have perhaps overstated the situation in saying that it is "unparalleled" in the Uniform Commercial Code, this was not intended.

I respectfully suggest, however, that we have gone overboard with the lien provision; for even without the lien provision, I think the bill will provide for the strongest Federal Government intervention in the commerce of the United States to protect a certain class of sellers.

Mr. PEYSER. I agree with the Chairman on that issue.

I tell you very frankly that I will be amazed if this bill goes through this committee and ever gets to the floor of the House.

I think you are moving the Federal Government into a massive program that opens the door to a Federal guarantee.

I do not see any reason why commerce should be protected in every aspect.

The CHAIRMAN. The Packers and Stockyards Act, which was originally passed in 1921, initiated some protections which this bill is further expanding.

In addition, during the intervening half century, the Federal Government, through the Department of Agriculture, has set up certain protections for control of the sale of livestock.

I am not in any way critical of this bill as a whole, but I did want to emphasize that this is not something we usually do to protect small business operations of any kind. Instead, it is a special kind of law that relates only to packers and stockyards.

Mr. POAGE. May I point out something further in connection with that?

A consent decree or a judgment was entered into in 1920 between the U.S. Government and the then five big packers. One of them is no longer in existence. The Packers and Stockyards Act was enacted as a part of the whole transaction—the consent decree and the action by the Congress. It put restrictions on the packers, restrictions that at that time certainly did not fall upon many other people in business. In turn the packers were limited as to what they could do.

It seems to me that that is the only excuse for an action that I thought we could justify, although the subcommittee did not adopt it. I thought we could justify requiring grocers who buy most of this meat to make prompt payments, too. They get cash from the housewife when they sell it.

As a practical matter, you cannot very well force packers to make prompt payments and then deny them the opportunity to collect promptly.

We have so tied the hands of the packers that it seems to me that there is a justification for special action here that does not exist in a good many other fields.

Mr. PEYSER. Does this then say that the small cattleman who perhaps does not pay the person from whom he buys the feed for the cattle is going to have to buy a bond? How about the cattle producer himself having a bond to guarantee that the person who has sold him the feed gets paid?

Mr. POAGE. That is the weakness of the whole thing.

The cattle producer and the feed man who he is buying from, who is usually a farmer, do not have these restrictions on their actions. They can talk with each other. They can talk with their neighbors. They can sit back and decide that they will not buy.

However, if these packers discuss these things with each other, they are in violation of the law and subject to great penalties.

Mr. PEYSER. We are talking about the major packers. You admit this legislation would not affect them. The major packer does not have a credit problem.

Mr. POAGE. I did not say that.

I think that the major packers may not have the great problem, but they have the same costs. They may not have quite as much cost because they have a better credit rating and may be able to get money cheaper.

Obviously if Safeway does not pay its bills for 30 days or 20 days—I understand it actually runs between three and four weeks—if they do not pay their bills, obviously the major packers are going to have to pay out a good deal of money to finance Safeway. The amount of money Safeway owes to them at one time is a substantial amount. The major packers have to pay it the same as the smaller packers. This is in proportion to what they have sold.

I think that the restraints that we have on the packers are probably what justifies the different treatment of the situation.

You are exactly right in saying that this is something that moves toward more and more Government control. It is something that many of us have been concerned about.

Many of us have thought that possibly this did not justify the cost. I do not know now that it justifies that cost, but an overwhelming majority thinks that it justifies the cost. I am willing to go along with them to see if it does.

Mr. BEDELL. I think we are missing the whole point here, Mr. Peyser.

I have been a small businessman. I think it is a unique situation. Any small businessman recognizes as a part of his job in doing business the necessity to check the credit of those people to whom he sells. If it is a seed man or a feed man, it is part of his job. He has access to do it quite readily.

As I see the situation with the farmer raising livestock, he, first of all, does not have the capability. Second, he does not have the information that he needs in order to check the credit of the various producers, as is true in all businesses.

I think we have a unique situation here that does not exist generally for business.

Mr. PEYSER. Are you suggesting that the packers who purchase this do not have a credit rating that is published?

Mr. BEDELL. I am suggesting that I know of almost no farmer in my area who could get the financial statement of American Beef Company and look at that financial statement and have any idea of what the financial condition was of American Beef. That is about the only way I know for him to try to check on the credit.

Mr. PEYSER. The same would be true with respect to many of the major manufacturers who have gone broke in one way or another and have taken small businesses with them. All of them have had access to credit ratings. None of them have seen the disasters coming. Every businessman, whether cattle producer or a small businessman, runs into this.

I went out to the Montana Cattle Growers Association to meet for 3 days with them. They were astute businessmen.

Mr. BEDELL. There is no question about that.

However, if we have to build that expertise into every cattleman, then we are going to make it tougher and tougher for the small family farmer to continue to stay in business. I think in our society we have a real obligation to try to do what we can to help keep that small family farmer in operation.

Mr. PEYSER. I agree with that, but I do not agree with this approach.

The CHAIRMAN. The gentleman from Texas, the chairman of the subcommittee, yields back his time.

We know generally what is in the report of the subcommittee.

I recognize Mr. Melcher.

Mr. MELCHER. We should not lose track of how they transfer ownership of these cattle. It is a bill of sale. The bill of sale is given by the owner of the cattle on the basis that he is going to be paid.

We could say in the bill that the packer should pay by certified check, which would clear everything, but we do not. It is cheaper for the packer not to do that. We could say in the bill that the bond would have to cover every check the packer writes, every outstanding check, but we do not. It is cheaper for the packer not to require that large a bond.

So what we have done is take the next step, which is easier for the packer. We have said "OK, the bill of sale for the ownership of that cattle can only pass when the previous owner, the cattleman, has his money. We will put it in a trust arrangement." We do that simply because it is cheaper for the packer.

The packer is benefitting from this arrangement, too.

As the bankers said, as Mr. Thone read, this will not hamper the packer's credit. Where the packer benefits is that now we have identified under the act that the meat purveyors and the middleman are also covered.

So the packer is going to have to hold that trust to make sure that the original owner is paid for that bill of sale. In turn he is also going to have the assurance from the purveyors and the other people to whom he sells that he is going to get his money.

Mr. HARKIN. Where in the bill does it say that the purveyors and retailers are going to have to make that prompt payment?

Mr. MELCHER. I read it in section 201 as amended.

Mr. HARKIN. What page?

Mr. MELCHER. On page 2, section 201, section 2 of the bill.

"Section 201. When used in this Act the term 'packer' means any person engaged in the business of buying," et cetera. Then go down to (c): "Buying or otherwise acquiring or selling or otherwise marketing meats, meat food products or livestock products in unmanufactured form."

Counsel, did I state that correctly?

Mr. BOR. Mr. Melcher, you are correct in your reading of the revised definition. But if you look at the specific section where it deals with prompt payment, that section only applies to the purchase of livestock. In the print that you have on your desk, if you will look at page 10, you will see that it says, "Each packer, market agency, or dealer purchasing livestock." The thrust of the provision is addressed only to that situation.

Mr. MELCHER. Then the packer does not gain any added protection as far as the purveyor is concerned in getting prompt payment?

Mr. BOR. He does gain in another sense. The purveyors and jobbers are brought under the unfair trade practices provision of the bill. That is section 202 of the Packers and Stockyards Act.

To the extent a packer is adversely affected by an unfair trade practice that is engaged in by a dealer to whom he sells his meat products, he would be able to seek recourse with the Department of Agriculture and with the Federal courts.

Mr. MELCHER. Then I stand corrected.

He does not have the advantage of the trust provision, but he gains in this section in the bill in that the purveyors and the middle man would come under the act and would be subject to the unfair practice provision.

Mr. KELLY. Specifically, what portion of the bill provides for this coverage of the purveyors?

Mr. IMHOF. On page 2 of the bill, revised definition of packers, specifically in line 9. It includes in the definition of the term "packer": "Any person engaged in the business of buying or otherwise acquiring or selling or otherwise marketing meats, meat food products or livestock products in unmanufactured form."

Mr. KELLY. I am referring now to what provision in here provides that they would be covered.

Mr. IMHOF. If they are defined as packers, they would be subject to section 202 of the act. This defines unfair practices in which packers are not permitted to deal.

So by virtue of being included in the definition of packer, they would be subjected to the regulatory provision of the Act, specifically section 202.

Mr. MELCHER. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The gentleman from Colorado, Mr. Johnson.

Mr. JOHNSON. This is not clear to me.

To whom does the bonding protection go? Is there pro-rata distribution of the bonding protection among all of the producers and creditors or is it limited?

I understand we are talking about the two-day kill. Does that protection apply specifically to people who have provided cattle in a two-day period or is it prorated generally?

Mr. POAGE. Will the gentleman yield?

We would expect it to go to those within the two-day kill only.

Mr. BOB. Mr. Chairman, I think what normally happens is that the two-day kill is a means of determining what the dollar coverage of the bond would be. You would determine the average two-day kill for a particular packer.

Let's assume it comes to $500,000 worth of livestock. His bond then would be in the amount of $500,000. That bond would be available to protect any livestock owner who was unpaid.

Mr. JOHNSON. What if you have a million dollars worth of unpaid debts? Does it apply pro rata?

Mr. THONE. Pro rata.

Mr. POAGE. You cannot have a million dollars of unpaid debts. You can have them, of course, but you cannot exceed your normal two-day kill because the packer has to pay.

Mr. JOHNSON. But what if he does not? If they do as they are supposed to——

The CHAIRMAN. It would be possible to imagine more obligation than that simply because the bill also allows livestock producers to extend the time for payment beyond the two-day prompt payment requirement. However, the bonding is not a complete and absolute guarantee to the livestock producer that there is a fixed amount of money waiting there in the bonding company for a 100-percent payment.

This is a requirement which is over and above the standard requirement in normal trading relationships between buyers and sellers. It is an additional protection in two ways: Both in the real resources which are available in case of failure and in terms of the bonding company's own concern and involvement.

Mr. JOHNSON. The question still has not been answered.

Mr. POAGE. This gives the same authority to the Secretary that he has exercised in regard to auction sales.

We used to hear about a good many losses at auction sales. I have not heard of one loss at auction sales in the last 2 or 3 years. There may have been some. I am not trying to say that there have been none in the United States, but certainly there have been no substantial losses at the auction sales.

This gives the Secretary of Agriculture the same authority in connection with the packers that he is now exercising in regard to the auction rings. I think it has worked well. I think experience has proved it has worked well. I know that there is a lot of prejudice against the Secretary of Agriculture, but I am willing to let him work this as he has worked it in the auction sales. I think he will.

I think the best way of guessing what the future holds is to look and see what the past has given us under the same circumstances. The past has given us real good protection.

Mr. JOHNSON. I am not arguing that. It seems to me it ought to be clarified in the bill because there is always the possibility when you have a 2-day hiatus for an operation to go 3, 4, 5, or 6 days before anybody is really aware.

It seems to me that if the bond is only going to cover 2 days, then we ought to make it clear as to whom is protected. A fair way would be to have it prorated. However, that is up to the committee.

The CHAIRMAN. The only point I am trying to make is this:

Much of the concern expressed around the country among cattlemen and stockmen was heightened and exacerbated by the experience of the major bankruptcy of the American Beef Processing Co.

I am very sympathetic to the problems that were revealed in that incident; but we will make a mistake, in my judgment, if we think that we can, by any series of exacting requirements, present some absolute Government-guaranteed system under which it is impossible for any packer to be bankrupt or for any stockman to be caught in that bankruptcy.

If what we are really seeking is a 100-percent guarantee, we would be far wiser to make a provision in the law that the United States will guarantee the payment. The best way to truly insure that the unfortunate situation will not recur is to pledge the full faith and credit of the U.S. Government.

Yet, it can be argued that the United States itself does not always come out of bankruptcies with all of its obligations paid.

In striving for 100-percent protection, we are going to get a bill so difficult that I am afraid it will never achieve its purpose.

Mr. JOHNSON. I have been involved in enough lawsuits.

Who gets the claim against the bonding? Is it for 2 days or prorated among those who have supplied for the last 4 or 5 days?

It seems to me that we can make that very clear. Do we want to protect all those unpaid creditors within the bonding limitation or do you pay them pro rata? Otherwise, you are going to have court battles.

The CHAIRMAN. I think that is the intention, but let me ask counsel.

Mr. BOR. The purpose of this was not to protect only those who sold livestock within a two-day period. It is to protect any unpaid seller. The two-day kill provision was an index to tell how much dollar coverage should be involved in the bond. Any unpaid seller would have the benefit of the bond.

What normally would happen would be this: If you have an insolvency situation, then the unpaid sellers would join together in a suit against the bonding company and would be paid pro rata by the bonding company.

The CHAIRMAN. Mr. de la Garza?

Mr. DE LA GARZA. This American Meat Processing Co., or whatever the name was, not being on the subcommittee and not having access to the subcommittee hearings, would somebody tell me who they are and where they are from? I would like to know what happened and who took what. I would like to have the story.

The CHAIRMAN. The gentleman does not have enough time in his 5 minutes to obtain that information.

Mr. DE LA GARZA. Apparently we are going to mess up the whole act to correct something about that company's bankruptcy.

Mr. THONE. Will the gentleman yield?

Mr. DE LA GARZA. We ought to have it on the record as to why we are taking this approach.

Mr. THONE. Very briefly, American Beef is located in Omaha, Nebr.

Mr. DE LA GARZA. I would suspect that.

Mr. THONE. Well, there are some big ones in Texas, too.

We are not addressing ourselves just to the American Beef case.

Mr. DE LA GARZA. That is all I have heard here.

Mr. THONE. There have been 167 packer bankruptcies in the last 15 years. There have been seven or eight in the last year or so.

In addition, the Packers and Stockyards administrators—and you have got some good ones down there in Marvin McLain and Glen Brerman—readily conceded and testified before us that they have got a paper tiger down there.

That is what we are trying to do here. We are trying to strengthen an act that obviously needs some strengthening badly.

It is much broader than just American Beef.

The CHAIRMAN. Mr. de la Garza, I think the record will show that when I mentioned the magic words American Beef Processors, I also mentioned the situation in which it was involved exacerbated concern about this problem, since it was a very dramatic insolvency in which a large number of people were affected.

Mr. THONE. $20 million.

Mr. DE LA GARZA. That is the only one that had been prominently mentioned.

The CHAIRMAN. Mr. Wampler?

Mr. WAMPLER. If I could inquire of the distinguished gentleman from Texas:

In the course of the subcommittee hearings did you address yourself to the situation where a seller of livestock delivers a bill of sale to a buyer on which there was a lien existing at the time of sale?

Then if the seller took the proceeds from the sale and did not satisfy the lien, what protection would the packer have if the holder of the lien in turn moved against him for payment, meaning that the packer would have to pay twice for the same thing?

Mr. POAGE. We did not go into that. It was mentioned in the proceedings of the subcommittee. We did not attempt to give the packer this kind of protection.

Mr. Melcher feels that this is for packers only, but we left the packers at the mercy of State law in that respect. Of course, every State does have legislation in that regard. We left the packers right where they are as far as buying livestock that already had a lien on it.

They do suffer some losses as a result of that.

Our registration system in most States is such that it does not provide any real protection. It gives us no practical way in which the buyer of that livestock can know where there is a lien.

I understand you can go to the courthouse and run down the mortgages. At the same time. There is no practical protection.

There is State law. We did not change that in the least.

We recognize that packers do have to take some risks.

I do want to suggest that we did not try to write a packer law. We tried to protect producers from as much unnecessary expense as we could. We are thoroughly convinced—or at least let me say that I am thoroughly convinced—that either the producer or the consumer will have to pay for all of the extra costs which we impose here.

We are not going to be able to add these costs and require packers to absorb them. In the first place, they can pass them one way or the other to the producer or to the consumer. They are going to pass them on one way or the other.

We were really concerned that we were going to get these expenses out of line with the amount of good that we are going to do with this bill.

I think that we are putting maximum protection in the bill. We may have put so much that it has already cost us an unreasonable amount.

I think the chairman pressed that point. We discussed it in the subcommittee. I pointed out that we had already given enough protection in the first two: The bonding and the prompt payment provisions.

Of course, as you approach perfection and that 100 percent guarantee, your costs go up very rapidly—much more rapidly. You can take care of 98 percent of the losses more cheaply than you can take care of the last 2 percent.

If we are going to try to make this a 100-percent guarantee, then the chairman is exactly right. You will have to have the Treasury guarantee it in the first place and cut out all of this other expense.

Mr. WAMPLER. Would it be overly burdensome or unreasonable to require the seller of livestock at the time he issues the bill of sale to have an accompanying document stating that there is, in fact, a lien on it and say who holds it? Would that be burdensome?

Mr. POAGE. I do not see putting that in the law. If anybody wants to require it now, he can.

I do not think that the processors have felt that the losses were great enough to justify it.

Irritation—not so much the direct expense, but irritation—changes into expense somewhere down the line. I do not think that they have felt that the benefits they would receive would be great enough to pay for that irritation.

They could require it now. You can require a certificate from the seller if you want to.

Mr. WAMPLER. I think you have answered my question.

It does seem to me to be a problem, but perhaps not of sufficient magnitude.

As you well know, the very nature of the livestock industry is that frequently livestock is sold in other States. I was simply concerned about this.

Mr. POAGE. They are more often sold outside of the county where the lien is recorded than in the county where it is recorded.

Mr. WAMPLER. I thank you for answering that question.

Mr. THONE. I was just going to respond to Chairman Poage.

I do not think section 8 really would add much cost to the administration of this bill. I do not see the so-called lien section and trust section adding much cost.

Mr. POAGE. It does not add much cost to the Government, but it adds cost to the processor.

Mr. THONE. Not as I envision the implementation of that section.

Mr. POAGE. It adds cost. It impairs your ability to borrow money and that adds cost.

Mr. THONE. I would concede that it will in some instances reduce the availability of cerdit to some of the packers. I will concede that.

The CHAIRMAN. I recognize Mr. Richmond.

Mr. RICHMOND. I understand that enforcement of section 206 would cause any number of independent packers to go out of business.

Mr. THONE. Why, Mr. Richmond?

Mr. RICHMOND. Because of their inability to borrow money during that week that they have given the farmers lien on the cattle.

Mr. THONE. Aren't you implying, Mr. Richmond, that these are probably pretty shaky packers? Those are the very packers from whom we think our producers need protection.

Mr. RICHMOND. In two other sections of the bill those farmers are protected from the shaky packers. No. 1 is the bonding factor. No bonding company is going to bond a shaky packer for even 2 days.

Second: We have the fact that we give the Secretary and the Packers and Stockyards Administrator the right to have periodic checks on all packers.

Mr. THONE. I know who told you, too. They were in my office.

Mr. RICHMOND. On the other hand, I am interested in keeping people in business, not out of business.

Of course, I am more interested in the independent meatpackers because that means more people in the business and more competition and lower prices for the consumer.

It seems to me very valid that, first of all, the Secretary has the right to demand balance sheets, property loss statements, and financial information any time he wants to do so.

Second, the Stockyards Administrator can look into any supposedly shaky independent packer.

Third: No bonding company will give an independent packer a 2-day bond if there is any question about whether or not he is shaky.

I do not know why we should enact legislation here that is going to automatically force several dozen packers out of business.

Mr. THONE. Let me quickly say this: It just seems to me patently unfair that the Chase-Manhattan Bank—and those are the folks who saw me and they checked with Congressman Peyser also—wants as collateral the livestock from our producers for which the packers have not paid.

I just cannot get that through my thick head.

Why do they have to have that as collateral? It just is not fair.

Mr. RICHMOND. Obviously, Mr. Thone, under such things as accounts receivable financing or inventory financing, any bank and any commercial institution would take a lien on the accounts receivable and inventory of that institution which they finance.

I do not think we want to put independent packers out of business.

Mr. PEYSER. I have had absolutely no communication with the Chase-Manhattan Bank. I did not know they were even involved.

I wonder about the testimony that went into the creation of this bill.

Have we had any testimony as to the cost of the bonding? Have any bonding companies given us an estimate?

Mr. RICHMOND. My understanding is that the cost of the bonding which is specified in the bill now will cost the industry an additional $1,900,000 a year, which I do not consider excessive.

Mr. PEYSER. All right, $1.9 million is an estimate. Obviously that is going to be paid by the consumer. There is no question about that.

Mr. RICHMOND. Yes.

Mr. PEYSER. I think the chairman himself indicated that either the producer or the consumer is going to pay one way or the other. I agree completely.

What is the normal pay time now that a packer has in dealing with a producer? What is the usual understanding among creditable business operations today? Is it 2 days? Is it cash on the barrel head?

The CHAIRMAN. The regulations under the Packers and Stockyards Act currently call for payment on the day following the day of the transaction. The problem arises from the fact that this has not been enforced with any regularity.

This bill would put into statutory law a requirement that those payments be made subject to the opportunity of the seller to make financial arrangements with a purchaser for up to 10 days while still treating it as a cash transaction.

Mr. PEYSER. That is my understanding.

It is totally impractical under existing law, which is why it has never been enforced.

Obviously the people have gone ahead on a system of doing it within a 10-day period.

Why then should we legislate 2-day payment and back it up by saying bonding is necessary?

This is going to have a cost. I think it would drive the independents out.

The gentleman from New York was making this point. Even the legitimate independents, the good ones, are going to be driven out. We are promoting the big packers to come in and take them over because they are the ones who can get the credit.

I think the gentleman from New York is correct.

Mr. RICHMOND. Mr. Peyser, I feel that the 2-day bond and the $1.9 million cost to the multimillion dollar industry will not in any dilatory way affect the consumer. The added protection is felt by the consumer as well, in the form of increased market stability.

I would be against the invocation of costs to section 206, which continues that to 7 to 10 days.

I certainly think that if we give the Secretary of Agriculture and his Packers and Stockyards Administrator the right to look into every packer's figures, then we are giving the farmer as much protection as we consumers can afford to give him and still keep the independent packer in business.

Mr. ENGLISH. Mr. Peyser made a good point in his argument for the lien provision which is in the act.

The simple fact is that this provision on the prompt payment has not been enforced. The lien provides extra protection.

The second thing is this: Instead of paying in cash, which I think would make us all very happy and make the farmers very happy, the lien is what the packer is paying for the convenience. It is a convenience to him to delay the payment.

If he paid the seller on the spot with a cashier's check or something else, then there is no problem. There is no penalty as far as the lien is concerned. He has no difficulty there.

Mr. RICHMOND. It would put independent packers out of business, which I do not want to see happen.

Mr. ENGLISH. All they have to do is to pay cash. Then they do not have to worry about any inconvenience.

The problem you are getting into is that they are paying for the convenience of being able to delay payment.

If the small independent you are talking about does not want to mess with the lien, then he can pay cash. Then he is home free and everybody is happy.

The CHAIRMAN. I recognize Mr. Thornton.

Mr. THORNTON. Thank you, Mr. Chairman.

I find myself in the position of changing an attitude expressed in the subcommittee during the discussion of section 206 with the provision relating to the imposition of a trust.

In subcommittee I supported that because it seemed to me to be a fair statement of what the law ought to be in a payment situation such as had been described. I still think it is basically a fair rule.

It was a fair rule. This is indicated by the fact that the Circuit Court of Appeals for the Fifth Circuit of Texas ruled that it was fair. This was in the case in re *Samuels & Co., Inc.*

On appeal the Supreme Court reversed that case saying that there was no mandatory, uniform national law imposing a trust relationship in this situation.

It remanded it to the fifth circuit. Three judges on the fifth circuit made a determination that under the common law and under the uniform commercial code and other applicable codes in Texas a fiduciary relationship existed and the seller would be paid.

I think that this may be the preferred rule under uniform commercial code decisions around the country.

I do not think that it is a matter in which the Congress should now preempt local law and establish a rule which would be national in scope to determine the rights of buyers and sellers rather than leaving the question to the laws of the separate jurisdictions. This is particularly the situation so long as the legal questions have not been finally resolved.

So I will support your motion to eliminate the trust provision from the bill.

The CHAIRMAN. The Chair would like to say that it appears unlikely that we will finish consideration of this bill within the time remaining since we still have a number of controversial topics to discuss.

How many members could not be present tomorrow at 10 o'clock?

It appears that we will not get a quorum, so the Chair will have to reschedule the bill at a later time for further markup.

We have a tight schedule and there is some pressing business before the committee which has already been scheduled.

I do consider this bill a priority item within the committee's calendar and intend to give it full consideration within the limitations imposed by other bills.

I recognize Mr. Grassley.

Mr. GRASSLEY. I have a question of Mr. Poage or of counsel.

On page 10 there are three sentences. The first sentence and the last sentence have reference to "each packer, market agency, or dealer." The second sentence leaves out the word "packer."

What is the reason for leaving out the word "packer" in the second sentence on page 10?

Mr. IMHOF. Mr. Grassley, if I understand your question, the second sentence refers to purchaser. That would be the packer.

Mr. GRASSLEY. On page 10 the second sentence says, "Any such agreement shall be disclosed in the records of any market agency or dealer."

Why is the word "packer" left out there as opposed to it being included on lines 1 and 2, as they are numbered there?

Mr. IMHOF. It was intended to be covered in the following words which are "in the purchaser's records." The packer was understood to be the purchaser.

Mr. GRASSLEY. So it should be left out?

Mr. IMHOF. I believe packers are covered by that phrase, yes.

Mr. GRASSLEY. I have a further question of Mr. Poage.

In regard to the prompt payment, how did you take into consideration the problem of check flow? That is a major problem.

The farmer receives a check, which is the payment as defined in your bill. But the fact is it takes a long time to clear the checks with the packer's bank, which is the final determination of whether or not payment is really being made, in my estimation.

Then there is the fact that sometimes that has been used as a subterfuge to avoid payment or at least to provide a lot of interest free money for the packer.

Also, that question relates——

Mr. POAGE. Let me answer one at a time.

Mr. GRASSLEY. Included with it, however, is that it says on line 4, "Extending the normal period of payment" is an unfair practice.

Is that the answer to my question? If so, there is not enough definition in the bill of extending the normal period of payment.

Mr. HIGHTOWER. Mr. Grassley, we will offer an amendment at the proper time revising this section 409.

You referred to the problem of the float. We will provide that payment should be made by check or wire transfer of funds.

One of the main abuses of the float was on the draft.

You see, there is a difference in actual conveyance of title with a check and a draft.

So we propose in an amendment to this section to provide that payment would have to be made the following day by check or wire transfer of funds. That does address itself to the problem of the float. That is where the principal abuse was.

I am not quite sure about your other question.

Mr. GRASSLEY. On line 4, "Extending the normal period of payment" is defined as an "unfair practice." My question is about that.

Mr. HIGHTOWER. We completely rewrite that section and eliminate that language.

Mr. GRASSLEY. In a sense then your amendment is a way of guaranteeing that the farmer will have cash in hand confirmed within 24 hours?

Mr. HIGHTOWER. Also, in the amendment we are providing grade-yield sales by spelling that out. You can sell cash on the barrelhead or you can sell grade and yield. This does extend.

But if the producer-seller chooses to use that method of selling, then it does give more time to the packer. It is his choice.

Mr. GRASSLEY. Thank you very much.

The CHAIRMAN. Mr. Baldus?

Mr. BALDUS. The bonding provision is what we are getting around to.

In the explanation it says in section 1, but I do not find it there.

What I am interested in is the flexibility. Sometimes 2 days may be adequate.

On the other hand, if the department has flexibility and if a company were to require more time, I wonder if it is there.

I do not find language in the bill that requires bonding. So I cannot determine that point.

Mr. POAGE. We changed the definition. It strikes out "marketing agency." It is "As defined in title III of the act, every packer as defined in title II of the act."

Mr. BALDUS. Without going through this, I would like to ask counsel this:

In this section is there adequate flexibility for the department to respond to the packers who maybe have expanded rapidly? Can they be flexible in the amount of bonding they require?

Mr. IMHOF. It is left to the discretion of the Secretary of Agriculture, who has delegated that to the Administrator of the Packers and Stockyards Administration.

Mr. BALDUS. Could we assume that there are any special cases under consideration? Is there any practice——

Mr. IMHOF. They invite all comments from all interested parties before they would promulgate any regulation governing a subject like that.

Mr. BALDUS. Thank you.

Is there a list of people who appeared for or against or neither for or against but for information on this bill before the subcommittee?

Mr. IMHOF. We have a printed record of the hearing.

The CHAIRMAN. The answer to the question is yes. The printed hearing contains the actual testimony of all who appeared or submitted statements for the record. The index of the hearing contains a list of all those who appeared.

Mr. MURRAY. Also the subcommittee staff prepared a list of the organizations as to how they came out for or against each of the key provisions which are in the subcommittee print, which is sort of a summary.

The CHAIRMAN. If there are no other questions at this juncture, the committee will stand adjourned.

We will be meeting Tuesday next at 10 o'clock for resumption of the markup of the grain standards bill. The continuation of the markup on this legislation will be scheduled by the Chair at an appropriate time.

The meeting will stand adjourned.

[Whereupon, at 11:55 a.m., the hearing was adjourned.]

# PACKERS AND STOCKYARDS ACT OF 1921, AS AMENDED

TUESDAY, MARCH 30, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
*Washington, D.C.*

The committee met, pursuant to notice, in room 1301, Longworth House Office Building at 10:10 a.m., Hon. Thomas S. Foley (chairman) presiding.

Present: Representatives Poage, de la Garza, Vigorito, Jones of Tennessee, Melcher, Bergland, Rose, Breckinridge, Richmond, Nolan, Weaver, Baldus, Krebs, Harkin, Hightower, Bedell, Fithian, D'Amours, Wampler, Sebelius, Findley, Thone, Symms, Johnson, Madigan, Heckler, Kelly, Grassley, Hagedorn, and Moore.

Staff present: Robert M. Bor, counsel; William A. Imhof and John E. Hogan, associate counsels; John M. Lindley, staff assistant; John Baize and Alan Gray, staff consultants, Subcommittee on Livestock and Grains; Weldon Barton and Leon Geyer, staff consultants, Subcommittee on Domestic Marketing and Consumer Relations; James Culver, staff consultant, Subcommittee on Dairy and Poultry; Charlotte Farwell, staff consultant, Subcommittee on Tobacco; Jerry Jorgensen, staff consultant, Subcommittee on Department Operations, Investigations and Oversight; Glenda Temple and Susan Bell, staff assistants.

The CHAIRMAN. The Committee on Agriculture will come to order.

The committee meets this morning for consideration of the bill H.R. 8410, to amend the Packers and Stockyards Act of 1921, as amended, and for other purposes.

[The bill, H.R. 8410, with suggested changes arrived at in previous meetings, follows:]

94TH CONGRESS
1ST SESSION

# H. R. 8410

IN THE HOUSE OF REPRESENTATIVES

JULY 8, 1975

MR. THONE (for himself and Mr. BERGLAND) introduced the following bill; which was referred to the Committee on Agriculture

# A BILL

To amend the Packers and Stockyards Act of 1921, as amended, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the proviso in the paragraph designated "Packers and Stockyards Act," under the heading "MARKETING SERVICE," in the Act of July 12, 1943 (57 Stat. 422; 7 U.S.C. 204), is amended by striking out "market agency and dealer" and inserting in lieu thereof "market agency (as defined in title III of the Act), every packer (as defined in title II of the Act) in connection with its livestock purchasing operations, and every other person operating as a dealer (as defined in title III of the Act)".

SEC. 2. Section 201 of said Packers and Stockyards Act (7 U.S.C. 191) is amended to read:

"SEC. 201. When used in this Act the term 'packer' means any person engaged in the business (a) of buying or otherwise acquiring in commerce livestock ~~or poultry~~ for purposes of slaughter, or (b) of manufacturing, processing, or preparing in any manner meats, ~~or~~ meat food products, ~~or edible poultry products,~~ for sale or shipment in commerce, or (c) of buying or otherwise acquiring or selling or otherwise marketing meats, meat food products, ~~or~~ livestock products in unmanufactured form, ~~poultry, or poultry products,~~ in commerce, on a commission basis or otherwise, either on his own account or as the employee or agent of the vendor or purchaser: *Provided, however,* That nothing in this section shall affect the jurisdiction of the Federal Trade Commission with respect to retail sales of meat, meat food products, livestock products in unmanufactured form, or poultry products as provided in section 406 of this Act.".

SEC. 3. Sections 202 and 312 (a) of said Packers and Stockyards Act (7 U.S.C. 192 and 213 (a)) are amended by deleting the phrase "in commerce" wherever it appears in said sections, and by deleting the commas immediately before and following the phrase "in commerce" in sections 202 (b) and 312 (a) of said Act (7 U.S.C. 192 (b) and 213 (a)).

SEC. 4. That the proviso in the paragraph designated "Packers and Stockyards Act" under the heading "MARKETING SERVICE" in the Act of July 12, 1943 (57 Stat. 422; 7 U.S.C. 204), is further amended by adding at the end thereof a new sentence as follows: "If the Secretary finds any packer is insolvent, he may after notice and hearing issue an order under the provisions of section 203 requiring such packer to cease and desist from purchasing livestock ~~or poultry~~ while insolvent, or while insolvent except under such conditions as the Secretary may prescribe to effectuate the purposes of the Act.".

SEC. 5. Said Packers and Stockyards Act is further amended by redesignating section 408 as section 411 and by adding to the Act a new section 408 to read as follows:

"SEC. 408. Whenever the Secretary has reason to believe that any person subject to this Act, (a) with respect to any transaction subject to the Act, has failed to pay or is unable to pay for livestock, meats, meat food products, or livestock products in unmanufactured form, ~~poultry, or poultry products,~~ or has failed to remit to the person entitled thereto the net proceeds from the sale of any such commodity sold on a commission basis; or (b) has operated while insolvent, (otherwise) or in violation of the Act in a manner which may reasonably be expected to cause irreparable damage to another person; or (c) does not have the required bond,

and that it would be in the public interest to enjoin such person from operating subject to this Act or enjoin him from operating subject to this Act except under such conditions as would protect vendors or consignors of such commodities or other affected persons, until complaint under this Act is issued and dismissed by the Secretary or until order to cease and desist made thereon by the Secretary has become final and effective within the meaning of this Act or is set aside on appellate review of the Secretary's order, the Secretary may notify the Attorney General, who may apply to the United States district court for the district in which such person has his principal place of business or in which he resides for a temporary injunction or restraining order. When needed to effectuate the purposes of this section, the court shall, upon a proper showing, issue a temporary injunction or restraining order, without bond. Attorneys employed by the Secretary of Agriculture may, with the approval of the Attorney General, appear in the United States district court representing the Secretary in any action seeking such a temporary restraining order or injunction.".

SEC. 6. Subsection 308 (a) of said Packers and Stockyards Act (7 U.S.C. 209 (a)) is amended to read:

"(a) If any person subject to any of the provisions other than title V of this Act violates~~, with respect to matters relating to livestock or poultry,~~ any of the provisions of this Act or of any

order of the Secretary made under this Act, he shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of such violation.".

~~SEC. 7. Section 309 of said Packers and Stockyards Act~~ (7 U.S.C. 210) is amended as follows:

(a) By changing the first sentence in subsection (a) to read: 'Any person complaining of anything done or omitted to be done, with respect to matters relating to livestock or poultry, by any person subject to this Act (hereinafter in this section referred to as the 'defendant') in violation of any of the provisions of this Act or of an order of the Secretary made under this Act, may, at any time within one hundred and twenty days after the cause of action accrues, apply to the Secretary by complaint which shall briefly state the facts, whereupon if the Secretary has reasonable grounds for believing that the defendant has violated the Act or an order of the Secretary made under the Act, a copy of the complaint thus made shall be forwarded by the Secretary to the defendant, who shall be called upon to satisfy the complaint, or to answer it in writing, within a reasonable time to be specified by the Secretary.";

(b) By substituting a colon for the period at the end of subsection (c) and adding thereafter the following proviso: *Provided*, That in complaints wherein the amount

~~claimed as damages does not exceed the sum of $3,000 an~~ oral hearing need not be held and proof in support of the complaint and in support of the defendant's answer may be supplied in the form of depositions or verified statements of fact unless the Secretary directs that an oral hearing be held."; and

(c) By adding at the end of said section the following subsections:

"(g) Any party adversely affected by the entry by the Secretary of an order granting or denying reparation may, within thirty days from and after the date of such order, appeal therefrom to the district court of the United States for the district in which the hearing was held: *Provided*, That in cases handled without oral hearing in accordance with subsection (e) or in which oral hearing has been waived by agreement of the parties, appeal may be to the district court of the United States for the district in which any defendant is located. Such appeal shall be perfected by the filing with the clerk of said court of a notice of appeal, together with a petition in duplicate which shall recite the prior proceedings before the Secretary and shall state the grounds upon which appellant relies to defeat the right of any adverse party to recover, or to establish his own right to recover, the damages claimed, with proof of service thereof upon each adverse party. Such an appeal by an appellant who has been ordered

~~by the Secretary to pay a reparation award shall not be effec-~~ tive unless, within thirty days from and after the date of the Secretary's order, the appellant also files with the clerk a bond in the amount of 130 per centum of the amount of the reparation awarded, conditioned upon the payment of any money judgment entered by the court against the appellant, plus interest and costs, including a reasonable attorney's fee for the appellee, if the appellee shall prevail. Such bond shall be in the form of cash, negotiable securities having a market value at least equivalent to the amount of bond prescribed, or the undertaking of a surety company approved by the court. The clerk of the court shall immediately forward a copy of the petition to the Secretary, who shall forthwith prepare, certify, and file in said court a true copy of the Secretary's decision, findings of fact, conclusions, and order in said case, together with copies of the pleadings upon which the case was heard and submitted to the Secretary. Such suit in the district court shall be a trial de novo and shall proceed in all respects like other civil suits for damages, except that the findings of fact and order or orders of the Secretary shall be prima facie evidence of the facts therein stated. An appellee shall not be liable for costs in said court and, if he prevails, he shall be allowed a reasonable attorney's fee to be taxed and collected as a part of his costs.

"(h) Unless a defendant who is registered under this Act, and against whom an order for the payment of money has been issued, shows to the satisfaction of the Secretary within five days from the expiration of the period allowed for compliance with such order either that he has taken an appeal as provided for in subsection (g) of this section or that payment has been made in full as required by such order, he shall be suspended automatically as a registrant under the Act at the expiration of such five-day period until he shows to the satisfaction of the Secretary that the amount therein specified has been paid, with interest thereon to date of payment. If an appeal is taken by such defendant and the judgment of the court is adverse to the appellant, or if the appeal is dismissed, unless the defendant within the five days thereafter makes payment as required by the order, he shall be suspended automatically as a registrant until he shows to the satisfaction of the Secretary that payment has been made, with interest thereon to date of payment. If such a judgment is stayed by a court of competent jurisdiction, the suspension shall become effective five days after the expiration of such stay unless full payment has been made, with interest to date of payment, and shall continue until the defendant shows to the satisfaction of the Secretary that he has made such payment, with such interest.

"(i) Unless any other defendant, against whom an order for the payment of money has been issued, shows to the satisfaction of the Secretary within five days from the expiration of the period allowed for compliance with such order either that he has taken an appeal as provided for in subsection (g) of this section or that payment has been made in full as required by such order, such defendant shall be liable to a penalty of $500 per day for each day, after said five days, in which he engages in any business subject to this Act, until such defendant shows to the satisfaction of the Secretary that the amount specified in the order, with interest to date of payment, has been paid, which penalty shall accrue to the United States. If an appeal is taken by such defendant, said penalty shall not begin to accrue until five days after judgment by the court adverse to the defendant, or dismissal of the appeal. If such a judgment is stayed by a court of competent jurisdiction, the penalty shall become applicable beginning five days after the expiration of such stay unless full payment has been made, with interest to date of payment, and shall continue to be applicable until such payment, with interest, has been made.".

SEC. 9. Said Packers and Stockyards Act is further amended by adding after section 408 (7 U.S.C. 229) a new section 409 to read as follows:

"SEC. 409. Each packer, market agency, or dealer purchasing livestock shall, before the close of the next business day following the purchase of livestock and transfer of possession thereof, transmit or deliver to the seller or his duly authorized agent the full amount of the purchase price, unless otherwise expressly agreed (in writing) between the parties before the purchase of the livestock. Any such agreement shall be disclosed in the records of any market agency or dealer selling the livestock, and in the purchaser's records and on the accounts or other documents issued by the purchaser relating to the transaction. Any delay or attempt to delay by a market agency, dealer, or packer purchasing livestock, the collection of funds through the mails, or otherwise for the purpose of or resulting in extending the normal period of payment for such livestock shall be considered an 'unfair practice' in violation of the Act. Nothing in this section shall be deemed to limit the meaning of the term 'unfair practice' as used in the Act.".

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SEC. ~~9~~ 8. Said Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181, et seq.), is hereby further amended by adding thereto after section 205 (7 U.S.C. 195) a new section 206, to read as follows:

"SEC. 206. (a) It is hereby found that a burden on and obstruction to commerce in livestock is caused by financing arrangements under which packers encumber, give lenders security interest in, or place liens on, livestock purchased by packers in cash sales, or on inventories of or receivables or proceed from meat, meat food products, or livestock products therefrom, when payment is not made for the livestock and that such arrangements are contrary to the public interest. This section is intended to remedy such burden on and obstruction to commerce in livestock and protect the public interest.

"(b) ~~It shall be unlawful for any packer to encumber, give a security interest in, or place a lien on, livestock purchased or to be purchased~~ All livestock purchased by a packer in cash sales, ~~or on~~ and all inventories of, or ~~on~~ receivables or proceeds from meat, meat food products, or livestock

(derived) shall be held by such packer in trust for the benefit of the sellers of such livestock until full payment for such livestock has been received by such sellers. Payment shall not be considered to have been made if the seller receives a payment instrument which is dishonored.

products therefrom, ~~except to the extent of the value of such livestock, inventories and receivables in excess of the amount which is owed to unpaid sellers of livestock in cash sales, and any provisions of a contract, agreement or other arrangement entered into by such packer shall be unlawful, and shall be unenforceable by any person, to the extent that it is in violation of this section.~~

"(c) For the purpose of this section, a cash sale means a sale in which the seller does not expressly extend credit to the buyer.".

SEC. (9) ~~10~~. Said Packers and Stockyards Act is further amended by adding after (new) section 409 ~~(7 U.S.C. 229)~~ a new section 410 to read as follows:

"Sec. 410. No requirement of a State or territory of the United States or any subdivision thereof with respect to bonding of packers or prompt payment by packers, for livestock purchases may be enforced by any State or territory of the United States or any instrumentality or subdivision thereof upon any packer operating in compliance with the bonding provisions under the Act of July 12, 1943 (57 Stat. 422; 7 U.S.C. 204), and prompt payment provisions of section 409 of this Act respectively.".

~~"SEC. 410. Debts of a bankrupt that are owing for the purchase of livestock, meats or poultry shall have priority in accordance with clause (5) of subsection a of section 64 of the Act of July 1, 1898, entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' (30 Stat. 563), as amended (11 U.S.C. 104(a)(5)), and shall have priority over all other debts and rents included within said clause (5) notwithstanding any other provision of law, if, at the time such debts were incurred, the bankrupt was a packer, market agency, or dealer subject to this Act.".~~

SEC. ~~11.~~ 10. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby. Pending proceedings shall not be abated by reason of any provision of this Act, but shall be disposed of pursuant to the provisions of the Packers and Stockyards Act, 1921, as amended, and the Act of July 12, 1943, in effect immediately prior to the effective date of this Act.

Mr. BERGLAND. I make a point of order. A quorum is not present.

The CHAIRMAN. The gentleman from Minnesota makes a point of order that a quorum is not present.

The clerk will call the roll.

[The rollcall follows:]

Present: Representatives Bergland, Baldus, Krebs, Hightower, Bedell, Sebelius, Thone, Johnson, Kelly, Moore, Foley, Breckinridge, Fithian, D'Amours, Madigan.

The CHAIRMAN. How is Mr. Jones of Tennessee recorded? Record him present. How is Mr. Melcher recorded?

The CLERK. He is not recorded.

The CHAIRMAN. Record him present. How is Mr. Wampler of Virginia recorded?

The CLERK. He is not recorded, Mr. Chairman.

The CHAIRMAN. Record him as present. How is Mr. Poage recorded?

The CLERK. He is not recorded.

The CHAIRMAN. Record him present.

The clerk will report the results of the rollcall.

The CLERK. Nineteen members answered when their names were called.

The CHAIRMAN. Nineteen members having answered, a quorum is not present.

The Chair, of course, will receive a motion to adjourn at this point.

Perhaps that could be restrained for a moment, so that we could begin discussion.

Without objection, we will proceed.

Mr. KELLY. Mr. Chairman, I reserve the right to object.

The CHAIRMAN. The gentleman will state his reservation. The Chair advises the gentleman from Florida that only 2 days were scheduled for the consideration of this legislation.

Furthermore, I doubt very much that we will complete action this morning. Certainly the gentleman's rights to offer his amendments will be protected.

Mr. KELLY. Thank you, Mr. Chairman. I withdraw the reservation.

The CHAIRMAN. The gentleman from Florida withdraws his reservation.

Are there any amendments to the bill?

Mr. HIGHTOWER. Mr. Chairman?

The CHAIRMAN. The gentleman from Texas is recognized.

Mr. HIGHTOWER. Mr. Chairman, while the amendment is being distributed by the clerk, this is an amendment to section 409 in regard to prompt payment.

The chief addition made by this amendment is to provide that payment must be made before the close of the next business day following the purchase of livestock.

It must be made at the point of transfer of possession. One of the problems that we have had is that the purchasers have been able to delay payment. The producer has no way of knowing whether or not he has a good check or whether he is going to be able to collect on his check because so many times checks are put in the mail and any delay is blamed on the fact that the mail was not prompt.

So in order for him to protect his rights he needs to know whether or not he has made a sale or whether he is going to get his money.

The payment then must be at the close of the end of the next business day.

This gives him an opportunity to do something about it if he has not gotten his money.

It provides that the delivery of that payment must be made at the point of the transfer of possession.

This eliminates the matter of the check coming from a great distance.

Mr. BERGLAND. Will the gentleman yield?

Mr. HIGHTOWER. Yes.

Mr. BERGLAND. I am not quite sure what the difference is between section 409 of the committee print and the gentleman's amendment.

On line 4 you refer to "transmit." Does that mean mail? That's the same language as in the print.

Mr. HIGHTOWER. Where are you reading from?

Mr. BERGLAND. I am reading from your amendment. You say "transmit or deliver." That is on line 4.

Mr. HIGHTOWER. The transmit could mean mail there, but he has to receive it before the end of the next business day.

Mr. BERGLAND. The seller would have to receive it?

Mr. HIGHTOWER. Yes.

Mr. BERGLAND. I am not familiar——

Mr. HIGHTOWER. And transfer of possession.

Mr. BERGLAND. If the gentleman will yield further and explain to me this. The trucker picks up the livestock and hauls it to the slaughterhouse some distance away.

Where is the point of transfer in that transaction?

Mr. HIGHTOWER. The point of transfer is at the point of delivery.

If he comes, that is, if the purchaser picks up the livestock, then at the point that he picked it up, as I understand it, is the point of delivery.

Mr. BERGLAND. So the check would then have to be delivered at the feed lot by the close of the next business day?

Mr. HIGHTOWER. That's right.

Mr. BERGLAND. I am not familiar with the electronic type transfer, but that presumably would be the only method by which the slaughterhouse located any distance away could get the check to the producer——

Mr. HIGHTOWER. Not at all.

I understand back some years ago that the procedure was that the purchasing agent would carry checks with him. They got away from that as a matter of practice.

Mr. POAGE. Will the gentleman from Texas yield?

Mr. HIGHTOWER. Yes.

Mr. POAGE. I think we could clear that up with this explanation. Texas, Oklahoma, and Kansas all now have State legislation requiring this kind of payment on the day of the transfer.

This bill gives an extra 24 hours to the packer, that is 24 hours in those three States, and they are three of the large producing States.

It has been working. It has been the law in Texas for about 18 months, I believe.

I believe it is the same time in Kansas, is it not?

Mr. SEBELIUS. Yes.

Mr. POAGE. All three of the States adopted this thing nearly 2 years ago.

They required payment on the day of transfer.

They said they could not do it. I admit that I didn't see how it could be done but it is being done, and I think the experience in those three States would indicate clearly that certainly it can be done with an extra 24 hours.

Mr. BEDELL. Will the gentleman yield?

Mr. HIGHTOWER. Yes.

Mr. BEDELL. If I interpret your amendment correctly, for all practical purposes, it would eliminate the mailing of checks? Is that correct?

Mr. HIGHTOWER. That's correct.

They must receive it before the close of the next business day.

Mr. BEDELL. If I were a producer and I were to contract for the hauling of the cattle to the packingplant myself rather than have the packingplant pick them up, how would the payment be made in that situation?

Mr. HIGHTOWER. If you were a producer and you hauled it to the packer?

Mr. BEDELL. I am a producer and you are an independent trucker. I have you haul my livestock to the packingplant to be delivered to the packingplant.

Mr. HIGHTOWER. If I am an independent trucker, then I am your agent.

Mr. BEDELL. Right.

Mr. HIGHTOWER. I would deliver it to the packingplant. The point of transfer would be the delivery at the packingplant.

Mr. BEDELL. They would pay you?

Mr. HIGHTOWER. They would pay me or your agent at that point. That would be at the point of delivery.

Mr. BEDELL. Under your amendment, if they paid you—that is, the packing plant paid you, the trucker—you, in turn, are supposed to get that payment to me. Under your amendment, would that be the proper procedure?

Mr. HIGHTOWER. Yes.

Mr. POAGE. That would be true only if the producer designated that trucker as his agent or representative.

Mr. HIGHTOWER. That is what I was saying.

Mr. POAGE. The mere fact that the trucker made the delivery would not give him any authority to pick up the check, but if the producer authorized him to accept the check as his representative, then of course he could do so.

Mr. BEDELL. If he did not, either the producer would have to go with the trucker—is that what would have to be done?

Mr. POAGE. If he did not, then the producer would have to come to the point of the transfer which, in that case, would be the packinghouse.

He would have to come there within 48 hours to get his money.

Mr. BEDELL. That has not been a problem apparently in Texas?

Mr. POAGE. We've only had 24 hours. We have required and our State law requires—and Oklahoma and Kansas laws require—that the payment be made the day of delivery of the cattle.

It has been done that way for more than a year.

Mr. HIGHTOWER. If the purchaser wants to work out another arrangement, he can agree otherwise in writing.

This is for the protection of the purchaser—that is, of the producer or the seller. If the producer wants to work out another arrangement, then he can agree in writing to accept it at another place and another time.

Mr. THONE. Will the gentleman yield?

Mr. HIGHTOWER. Yes.

Mr. THONE. I notice that this section you are replacing, and I have not cross checked it, is the section that specifically gives the producer that right—unless otherwise especially agreed to in writing.

I notice that that language has been deleted from your amendment.

Mr. HIGHTOWER. It is in section (b) of my amendment on the second page.

Mr. THONE. Thank you.

Mr. FITHIAN. Will the gentleman yield?

Mr. HIGHTOWER. Yes.

Mr. FITHIAN. I am more familiar with the Indiana process than I am of the Texas process. I am not clear how the amendment would apply.

Here is the general way in which it is done.

An individual farmer hires someone else to haul his cattle. They haul it into Chicago or wherever.

It is sold by a commission man who does not possess and does not come into possession of the cattle. It is sold to Kroger or someone else and he only acts as an intermediary and charges a percentage on the sale.

In that process, where it leaves a farmer and goes by way of an independent trucker to Chicago and goes through a commission sale and then goes from there to the packing house, or whoever buys it, at what point does possession take place?

Under those conditions, is it possible to get the check back down to mid-Indiana in 24 hours? It does not seem to me it would be, but I am in sympathy with what you are trying to do—that is, to make the most expeditious settlement so that somebody is not left holding the bag. I'm totally in sympathy with that.

I don't see how it could work under the arrangement we have.

Mr. HIGHTOWER. Under those circumstances, a transfer would be at the scale where the commission agent takes over.

Mr. FITHIAN. Would the commission agent——

Mr. HIGHTOWER. He would have to pay at that point—either to the seller or to his authorized representative, which would be the trucker.

That would be the point of delivery and that is the place where the payment would have to be made, unless the producer had agreed in writing otherwise.

They would have to pay him there. They would have to pay him by the end of the next business day.

Mr. FITHIAN. In many cases, the shipper does not designate which commission group handles it.

Mr. HIGHTOWER. The trucker who is carrying the livestock up there is the producer's representative.

So if I am the producer and deliver 100 head to you as the trucker to take to the commission agent and you are my representative and

you take them up and weigh them and transfer them, at that point you have made delivery.

You, at that point, as my representative should receive payment right then or within 24 hours.

Mr. FITHIAN. That is the problem.

When they take them in to the stockyards, the commission man's responsibility is to go around and solicit buyers to look at his three head, or whatever is brought in, and take the highest bidder.

The commission man does not buy the cattle at all. Someone else comes by and offers a bid, and he accepts or—if he thinks he can do better—he goes on.

It may take a portion of the day to get that done.

Mr. SEBELIUS. Will the gentleman yield?

Mr. HIGHTOWER. Yes.

Mr. SEBELIUS. The last time I sold cattle to a commission man, he gave me a check. That check was less the freight charges, the insurance, and the whole thing. I received it right then.

The CHAIRMAN. The time of the gentleman from Texas has expired.

Because this is an important dialog, we must recognize other members.

Mr. Fithian, do you want to pursue this subject?

Mr. FITHIAN. I would be happy to yield a minute or two of my time.

The CHAIRMAN. The gentleman from Indiana is recognized for 5 minutes.

Mr. FITHIAN. I guess what it would do would be to substantially alter the role of the commission buyer and substantially alter the role of the trucker.

My neighbor comes and picks up my 3 and he goes somewhere else and picks up 10 more, and so on.

Those arrangements would be altered.

Mr. POAGE. Where do you get your payment now?

Mr. FITHIAN. You get a check in the mail.

Mr. POAGE. From the commission man?

Mr. FITHIAN. It may come from the commission man.

Mr. POAGE. You get the check from the commission man. As Mr. Sebelius points out, it is less the fee and the payment for the pens and the freight, et cetera. Sometimes it's more than the check.

But you get a check with all the deductions on it from the commission man now. He is your agent.

Under the present practice, he is your agent. You are relying on him now. You would have no greater reliance than you do at the present time if you were selling through a commission man.

It is perfectly true that the practice is different in the Southwest. In most of our cases, we take the cattle at the auction ring and sell them.

The Federal law has long required that those auction rings have payment made in cash by the end of the day at least.

Mr. FITHIAN. The trucker takes them to Chicago—or used to take them to Omaha when I was in Nebraska—and they would be delivered there sometime around 10 or 11 o'clock at night.

The next day the transaction would take place.

The trucker has long since gone over to the lumberyard and picked up a little lumber and left. He is headed back to Indianapolis—or wherever he is going.

The transaction of the commission buyer who knows he has a bid from Kroger can set that amount and make out a check. But the trucker is long since gone, and I do not see how I could physically receive the check the next day if he is gone.

Given the mail service, I'm not sure we could even receive it the next week.

Mr. BALDUS. It seems to me that you still own the livestock then, and that is the point of delivery so far as you're concerned.

It would be the buyer's obligation to deliver that check at that point.

If you wanted to be there to pick it up, you could. Or if you accepted the fact that he put it in the mail, that is alright too. There is really no problem with the present way of doing business if you accept receiving it in the mail.

You are selling to someone you already sold to. You know them to be in sound financial condition. That is the logical way to do it.

Or if it were an unusually large purchase or if you felt uneasy about it, then it would be his obligation to deliver the check to you at the point of delivery when you delivered the livestock through your trucker.

So it would be either your obligation to go and pick it up or make one of the other arrangements as is outlined in Mr. Hightower's amendment.

Mr. FITHIAN. In other words, we would fulfill the obligations of the amendment if at the commission pen the next day there was a check made out to me.

Mr. HIGHTOWER. Absolutely.

Mr. FITHIAN. Then I would have it put in the mail—so long as it was made out to me the next day that would fulfill it?

Mr. HIGHTOWER. You would have an agent or somebody there who could take that check for you.

Mr. FITHIAN. In most cases, you would not have an agent there.

Mr. POAGE. The commission man would be your agent.

Mr. FITHIAN. In our operation if you designate the trucker as your agent, he would be long gone before the commission man rounded up his buyer and made the purchase.

I am trying to clarify.

Mr. HIGHTOWER. You do not think that the commission man would be your agent for that?

Mr. FITHIAN. According to how you define it under the law.

Mr. HIGHTOWER. As pointed out in your dialog with Mr. Poage a moment ago, the commission man is deducting his expenses in all of this and forwarding the money on to you. He would be your agent to receive payment for the cattle.

He would receive it right there.

If it took a week for you to receive your money from your agent, then that is something else. But if you were concerned about it, then you could be sure that it was in hand.

A phone call would ask for the money. You would ask when you could expect to receive it.

Mr. BEDELL. Because of the problems that might arise in Indiana or Iowa or somewhere, I would ask the gentleman if he—and as I understand it, we will be on this tomorrow. Is that correct?

Mr. POAGE. That's what the Chairman said.

But if we postpone decisions, we will not finish it tomorrow. The bill will not be brought out tomorrow, but sometime maybe in July.

As long as I am here, I'm going to try to move this thing along and not postpone for tomorrow what should have been done 3 months ago.

Mr. BEDELL. Personally, I would be hard-pressed to vote for this motion as it is now with no more information than what I have available.

I am sympathetic with what the gentleman is trying to do, and I agree with it. But I would like to have an opportunity to contact some of my people in my area to find out whether such a motion would be practical and whether we could operate with it.

It would seem to me that this is the first chance we have had to do it. If it is proper, I would move that this vote on the amendment be held over until tomorrow without prejudice.

Mr. POAGE. Could the Chair suggest that you fix an hour such as voting on it at 10:15 a.m. tomorrow?

You will never get through with this bill if you simply postpone all decisions until tomorrow.

Mr. BEDELL. I will move to postpone the decision until 10:30 a.m., Mr. Chairman.

Mr. POAGE. Is there objection to postponing action on this amendment until 10:30 tomorrow morning?

Mr. SEBELIUS. This amendment?

Mr. POAGE. Yes.

It is agreed then that the committee will vote on this at 10:30 tomorrow morning.

Mr. KREBS. A parliamentary inquiry.

Mr. POAGE. Yes.

Mr. KREBS. Does that mean that the amendment cannot be further amended?

Mr. POAGE. It means it will be voted on at 10:30 tomorrow morning; and if you want to amend it before then, then that's fine.

Mr. KREBS. I have an amendment, Mr. Chairman.

Mr. POAGE. An amendment is in order.

Mr. KREBS. It is a minor one.

I move that the term on line 4, "transfer or," be stricken.

In my opinion, it adds nothing in light of what the proponent of this amendment said a few minutes ago.

As I understand it, all it means is that the term transmit would be construed as putting the payment into the transmittal system; frankly, it would only cause confusion, because, as I understand this amendment, the amount has to be paid by the close of business the next day.

So I think it adds nothing to it. It can only detract from the amendment: so I move it be stricken.

Mr. HIGHTOWER. Will the gentleman yield?

Mr. KREBS. Yes.

Mr. HIGHTOWER. Mr. Krebs, I believe the word transmit is there in light of the electronic transfer of funds. I am not real sure just how necessary the word transmit is.

Certainly what we want is delivery.

Mr. KREBS. That's correct.

In other words, you're interested in the seller getting his money.

Mr. HIGHTOWER. Right.

Mr. KREBS. You are not really interested in whether he goes down to Western Union or makes some other arrangement for transmittal. You want the seller to get the money.

I would like to strike these two words because I think they're going to defeat that which you are trying to do.

Mr. POAGE. Will the gentleman yield?

Mr. KREBS. Yes.

Mr. POAGE. I realize that in some cases the delivery will be by transmitting the money by wire.

That might not be considered a delivery. That is the reason for putting that in there.

That is the reason for putting transmit in there—because of wire transmissions. This is not a delivery, but it achieves everything desired by transmitting it to him. However, it seems to me, Mr. Hightower, that in the latter part when you say that each packer before close of business the following day shall wire transfer of funds to seller's account—doesn't that take care of it?

Mr. HIGHTOWER. I believe it does.

Mr. POAGE. I can't see how the word "transmit" hurts anything.

Mr. HIGHTOWER. I would be happy to eliminate it from the amendment.

Mr. KREBS. Mr. Chairman, let us assume that somebody wants to transmit it by mail rather than to transmit it by wire. What happens then?

The language here allows an alternative. Thus, it seems to me that you might be creating a problem in terms of the language construction.

That is why I am suggesting it.

Mr. POAGE. He transmitted it by mail. He has not transmitted it until it is delivered—that is, until the mail is delivered.

If he cannot get it delivered the next day—I am not objecting to taking it out. Do you object, Mr. Hightower?

Mr. HIGHTOWER. I have no objection.

Mr. POAGE. Without objection, the word "transmit" will be taken out.

Any objection?

The Chair hears none.

Mr. BALDUS. Mr. Chairman, in order to gain an understanding of this, I would like to ask the gentleman from Texas—the author of the primary amendment—this question.

In order to satisfy the obligation that you had set up, it would seem to me that I, as an owner of livestock, would have a trucker deliver for me. If he become my agent, then he would be my representative there?

If the usual practice was—as it is in my area—to weigh the livestock and to give the man a check right there, then that usual practice would not be interfered with at all in this case.

Mr. HIGHTOWER. This will be putting into the statute what you say is the usual practice.

Mr. BALDUS. Except that it will allow statutorily 1 additional day.

Mr. HIGHTOWER. Yes.

Mr. BALDUS. I think the point that Mr. Fithian makes is that the person who delivers the livestock might not be the one in custody of it at the time of the actual transfer, and there might be another agent.

The other agent might be my representative somehow.

Then it would be our responsibility to have the hand delivery or wire transmittal—if that were my instruction—at the close of the business day the next day.

However, if I were not there to pick up the check, would it be adequate delivery on your part to put in the mail for me?

Mr. HIGHTOWER. No, not unless you had agreed to that.

Mr. BALDUS. You were there to offer him the check, but I was not there to pick it up, and I had no agent there to pick it up.

Would it be adequate delivery on your part to put it in the mail?

Mr. HIGHTOWER. Mr. Baldus, I am not sure—in the absence of an agent to receive the payment—what exactly the obligation of the purchaser is.

The obligation of the purchaser is to see that it is delivered at that point by the end of the following day.

Are you saying that the delivery was at a place where there was no office?

Mr. BALDUS. There would be an office, but I would not be there to pick up the check and I would not have an agent to pick it up.

I presume that you could satisfy that if my agent were the commission man and you delivered the check to him.

That would be delivery to me; is that correct?

Mr. HIGHTOWER. Yes.

Mr. BALDUS. Then he would put it in the mail.

Mr. HIGHTOWER. Or whatever arrangement you worked out with him. He could hold it for you. You could come get it.

Mr. BALDUS. The point that Mr. Fithian was trying to make and a point which needs clarification is that if I am not there or my agent is not there, then we have to have something else. He does not just walk over to the packer's office and demand the check.

How is it disposed? What satisfies your obligation?

Mr. HIGHTOWER. I cannot imagine a seller not having some understanding of when and where he is going to get paid.

Mr. BALDUS. I agree that that would very quickly work out.

But the point is that they want to be sure that they don't disturb the present practice.

I do not believe it would.

But I think what we need to establish is this: If, as Mr. Fithian said, they get the check in the mail now, then that is a matter of trust between them.

It would seem to me that if you stood ready to deliver that check to me by hand up until the close of day and if I had not called on you, then it would be adequate delivery on your part to put it in the mail.

Mr. HIGHTOWER. I would think so also.

Mr. BALDUS. Perhaps we could ask counsel if they follow this difficulty and if it would be necessary to write that into the bill in order to

make it understood or whether it would be understood by virtue of the proposed amendment before us.

Mr. IMHOF. Would you state your question again?

Mr. BALDUS. The question comes down to an adequate delivery on the part of the seller.

Inasmuch as the proposed amendment before us would require him to transmit by the end of the day following, by hand or wire transfer, then would he have fulfilled his responsibility by putting a check in the mail if I did not fulfill my responsibility as a seller to be there to hand pick it up or have an agent there?

Would simply putting it in the mail at that time fulfill his obligation? That is, of transferring the funds?

Mr. IMHOF. Under Mr. Hightower's proposed amendment?

Mr. BALDUS. Yes.

Or whatever is considered the usual practice in transferring money under other sections of the law.

Mr. IMHOF. I'm not sure I understand.

In the absence of an agreement, which is provided for in subsection (b), the transfer would have to be in the form provided for in subsection (a). This does not, as I understand it, eliminate the opportunity to transfer in funds through the mail.

Mr. HIGHTOWER. What he is saying is this.

The purchaser is ready and willing to comply with the law and make his payment.

Mr. IMHOF. Yes.

Mr. HIGHTOWER. At the point of transfer—but the seller is not there and does not have an agent there.

The question—as I understand it from Mr. Baldus—is that if at the end of the 24-hour period the seller has not come to claim his payment, then may the purchaser at that point put the check in the mail?

I would say that the obligation of the purchaser is fulfilled if he has stood there ready and willing to pay and has not had an opportunity to pay.

Mr. BALDUS. Let me carry that one step further.

It would seem to me that the seller would not have sacrificed any position he would have had by not being there, except that he would accept delivery in the mail rather than hand delivery of the check.

Mr. IMHOF. I am not sure I could guarantee it. I would agree with Mr. Hightower that if the purchaser made a reasonable effort to deliver payment to the seller—in the event that the seller failed to appear to pick up his check—then that would satisfy his obligation.

In terms of protecting the seller, if the seller doesn't comply with the terms of the sale, then I'm not sure what the result would be.

You were in a similar situation where the check was dishonored.

Mr. BALDUS. It would seem to me that the seller would not have sacrificed any condition other than the fact that he was not there to pick up the check. So he would have the check in hand he would have to receive it by mail rather than having it hand delivered. No other term of the sale would be sacrificed.

Mr. IMHOF. I do not know that I could guarantee that. I think we could accommodate in the history a statement that in the event of the failure of the seller to pick up his check, delivery by mail or reasonable effort to transmit the funds to the seller would satisfy the purchaser's obligation.

But as far as the seller sacrificing any of his rights as a result of his failure to comply with the provisions of the bill, I couldn't forecast a guess.

Mr. HIGHTOWER. I think the obligation is with the seller to pay. If he has made an effort to pay—that is, the purchaser—and if the seller is not there, then he cannot complain about the lack of a prompt payment.

That would be the only thing about it.

Mr. BALDUS. The usual practice in the community I come from is that the trucker will bring the check back with him. If he does not, it is simply mailed. In that regard, it is the same as what Mr. Bedell and Mr. Fithian are concerned about.

It would seem to me that this would not interfere with their practice. In fact, it would allow one additional day for the seller—if he chose to use it.

I have this question also: Would this override State law?

Mr. POAGE. It would.

Mr. IMHOF. By virtue of another provision of the bill, the answer is yes.

Subsection (b) of the amendment would provide for alternative arrangements at the option of the seller and would accommodate the situation you suggest.

Mr. THONE. Mr. Chairman?

Mr. POAGE. I recognize Mr. Thone.

Mr. THONE. I agree with you, Mr. Chairman, that we should move on. We have had extensive hearings on this.

I understand Mr. Bedell's consideration. It seems to me that the Hightower amendment is a good one but if you want to check with your people, then that would be alright—as long as we can move on with it early tomorrow morning.

Judge Kelly, as I understand it, has three amendments. He will process all of those tomorrow.

I would hope that maybe we could start moving here. I do not know how to expedite it, but you are the past master at it.

Mr. POAGE. If we would, we could move this a great deal faster by starting at the beginning and determining whether or not there are amendments to specific sections of the bill, and then we could move on.

I don't think we're going to move very fast without doing something of that kind. We are not going to vote on the Hightower amendment until tomorrow.

I wonder if it would be agreeable to go back to the beginning of the bill. There are four big provisions in this bill. I believe that we are going to agree on No. 3. I know of no disagreement on that. I do not know that there is going to be any disagreement on the packer bonding provision which is No. 1. But it seems to me that if we go down the list to see if we are in agreement on various sections, then we might move it along.

The first provision is packer bonding. It provides that the Secretary may require or shall require packers to post reasonable bonds. The understanding is that that would be 2 days' normal kill at the plant.

The provision would preempt State laws. Of course, the whole purpose is this: One, to have the bond pay off the balance due to any producer in case of bankruptcy.

But, beyond that, there's a reason that we feel would be important. That is, that it would tend to put pressure on the packers to make the public understand that the bonding company is not going to let this company get in bad shape knowingly because they would have to pay off.

Consequently, you have another watchdog. I think that is important.

Mr. THONE. Mr. Chairman, I think we have a general consensus. I would move that we adopt section 1.

Mr. SEBELIUS. I have a small amendment. This would refer to section 1, page 1, line 10.

I will read it:

After the word "operations," and before the comma insert the following: "except those packers whose average annual purchases do not exceed $500,000 will be exempt from the provisions of this section."

My sole purpose is this gray area of small business. The difference between the Federal inspection and State inspection of packers. I would hate to see some small packer who would buy cattle across the State line and get caught up in a locker operation. The local banker would know the situation. I would like this half-million-dollar safeguard. It may never come into play, but I think it would be a good stopgap at this point.

Mr. POAGE. Is there any objection to the amendment proposed by the gentleman from Kansas?

This would limit it to the larger packers.

Mr. THONE. The Department has no objection either, Mr. Chairman.

Mr. POAGE. Does anyone on the committee have an objection?

If there is no objection, the amendment will be included in the bill.

Is there anything else in the bonding provision?

Mr. IMHOF. Judge Kelly left with the clerk a copy of a proposed amendment to section 1.

Mr. POAGE. We will have to wait until tomorrow to hear his amendment. He has a right to be heard on it.

If there are no other amendments to be offered to section 1, we will pass on to the second part which is the prompt payment provision. That is what we have been discussing. There have been several questions about it. Are there any other amendments to be offered to the prompt payment provision?

Mr. SEBELIUS. Mr. English and I have discussed which one of us would offer it.

This is in section 6. It provides that if any person subject to any of the provisions of the act violates any provision of this act or any order of the Secretary, he shall be liable to the persons injured thereby to the full amount of damages as a consequence of such violation.

My amendment provides that after the word "violation" and before the period, add the following: "and a reasonable attorney's fee to be taxed and collected as a part of the costs of the suit."

I have been in this sort of thing where a sale barn put the farmer to it. They figure that the farmer has a grievance. If he ultimately does get his money, then he is out probably twice that much in attorney's fees.

I have been involved in situations such as this where there was no provision for attorney's fees. My three farmers have still not

gotten their money. I think a reasonable attorney's fee would be a deterrent to the packers who do not promptly pay. We could consider the situation——

Mr. KREBS. Will the gentleman yield?

Mr. SEBELIUS. Yes.

Mr. KREBS. What if the packer prevails?

Mr. SEBELIUS. The court costs would be assessed to the plaintiff so there would be no attorney's fees.

Mr. KREBS. We're talking about attorney's fees.

Mr. SEBELIUS. Say the farmer has sued the packer. Say he doesn't prevail. The court costs will be assessed to the farmer so that the attorney fee would be paid to the farmer.

Mr. KREBS. I think your amendment has merit; but what is fair to one side should be fair to the other. In all due respect, we should not confuse court costs with attorney's fees. You are talking about attorney's fees. If you're going to have a provision in there that the prevailing part should be awarded reasonable attorney's fees, then I will support you. But I would not want to see it for one side and not for the other.

Mr. SEBELIUS. He shall be liable to the person or persons injured thereby for the full amount of the damages sustained as a consequence of the volation.

Mr. JOHNSON. Will the gentleman yield?

Mr. Sebelius, the gentleman from California is correct. There is a difference between court costs which are assessed and attorney's fees. In addition, the Anglo-Saxon jurisprudence theory of attorney's fees is that nobody ever gets them as a part of a lawsuit. It's never been done in the last thousand or so years.

It is true that injustice is seemingly done. The Government is the worst offender in my opinion. I have seen the Government refuse to pay debts that they obviously owe, particularly in tax cases.

The U.S. attorney will say that the reason he is offering half is because of the cost of attorney's fees—which would make it worthwhile to settle the case.

If the Congress were really serious about righting a wrong in this area, then I think we would prevent the Government from behaving like that.

But when we come along and try to change a 1,000-year tradition of the common law, which is very sound and very basic, then I think we tend to make mistakes.

It has been proven to me over and over again that when we pass legislation—or anybody passes legislation—which overrules this long tradition of the common law, then generally we do not think the whole process through as carefully as we should.

Without more careful consideration of this, I think we should defeat the gentleman's amendment simply because the system has been developed.

Every lawyer knows that you do not get attorney's fees primarily on the theory that it tends to promote lawsuits.

Mr. SEBELIUS. I will say to Mr. Johnson that I guess that I have represented more of the little guys than so many of those big guys that you have in Fort Collins.

The farmer has sustained damage. There has to be a lawsuit. He should be entitled to be allowed by the court to get attorney's fees so he is not giving part of his cattle to the lawyer to be compensated.

Mr. POAGE. I think there is another item which ought to come in ahead of this amendment.

In this same section (a):

Any person subject to any of the provisions, other than Title V, of this Act violates—

That means that any packer who violates any of the provisions of this Act—

any of the provisions of this Act or of any order of the Secretary made under this Act, he shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of such violation.

That is where your amendment comes.

When we write this with "any person subject to the provisions of this act violates any of the provisions of this act," then what we are doing is, we are referring to the Packers and Stockyards Act of 1921.

That relates to a great deal of antitrust legislation.

So what we are doing here, inadvertently I think, is to subject these packers to these kinds of suits with regard to antitrust legislation, and not a failure to pay.

I am perfectly willing to subject them to the terms of this as to the failure to pay for livestock.

But when we open up this whole bill and make them subject to these penalties for anything that is in this Packers and Stockyards Act, then we have grabbed something out of the darkness and we don't know whether we have a polecat or an alligator.

Mr. THONE. Mr. Chairman, when you dispose of the offered Sebelius amendment, I have some corrective language which takes care of the objection you have which is a valid one.

Mr. POAGE. It seems to me that if we are going to make the correction, then it may have some bearing to consider the two.

At least bear in mind that, as this is now written, this thing could run into hundreds of millions of dollars.

Mr. THONE. We understand.

My corrective language would read as follows:

If any persons subject to this Act violate any of the provisions of the Act relating to the purchase of livestock, he shall be liable to the livestock seller or sellers' interest for the full amount of damages sustained in consequence of such violation.

Mr. POAGE. Remember when our staff originally wrote the bill they took care of that situation. It was actually in the subcommittee where we inadvertently changed it.

The original language provided: "with respect to matters relating to livestock or poultry."

When we took "poultry" out we took out too much. That's what we did.

It would seem to me that we should adopt the Thone proposal.

Mr. THONE. We have to dispose of the Sebelius proposal.

Mr. POAGE. All right.

Mr. SEBELIUS. I will ask unanimous consent to withdraw mine, and I will be in a position to adopt Mr. Thone's.

Mr. POAGE. Fine.

Without objection, the Sebelius amendment will be withdrawn and Mr. Thone will be recognized to offer his amendment.

Mr. THONE. I am sorry, Mr. Bedell, because I do not have a copy. They tinkered with it, and it is too broad for me. I have written on the copy.

It briefly says that—

If any person subject to this Act violates any of the provisions of the Act relating to the purchase of livestock—

That is the thrust of the whole bill—

he shall be liable to the livestock seller or sellers injured thereby for the full amount of the damages sustained in consequence of such violation.

I yield to the gentleman from Iowa.

Mr. BEDELL. The amendment I have would put poultry back in as far as the Packers and Stockyards Administration is concerned. They have the same injunction capabilities with poultry as they do with meat.

We would not put poultry back in with regard to the bonding requirements.

Would your amendment in any way affect what I have proposed?

Mr. POAGE. If the amendment is adopted, you could offer yours to it.

Mr. THONE. I will yield to the gentleman from Colorado.

Mr. JOHNSON. Would that include attorney's fees?

Mr. THONE. No.

I agree. I think it is bad precedent to start putting legal fees in here.

I practiced like you did in a varied law practice. I think it is poor policy.

Mr. BERGLAND. Will the gentleman yield?

Mr. THONE. Yes.

Mr. BERGLAND. If lawyers don't get paid, how do they make a living?

Mr. THONE. They get the fee from the client. And not from the litigation.

The point is, as the gentleman from Colorado so well pointed out, that you are stimulating lawsuits when you put legal fees into the law.

The client is ready, willing, and able to take care of counsel. We have never had a difficulty in that regard.

Mr. POAGE. Let us proceed with the Thone amendment, and then we will take care of the Sebelius substitute.

Mr. SEBELIUS. This is the same language. After the word "violation," and before the period, insert the following: "and a reasonable attorney's fee to be taxed and collected as a part of the costs of the suit."

If the man sold two cows to the sale barn and he had a problem getting paid there, then he would have to give the lawyer at least one of those cows.

I think he's entitled to get the payment for the cost of the third cow to pay that lawyer, rather than come up with having to give the lawyer one cow.

Mr. BERGLAND. Will the gentleman yield?

Mr. SEBELIUS. Yes.

Mr. BERGLAND. I think you make sense in the small cases which trouble folks.

But the gentleman from Colorado makes a valid point. We do not want this to become a lawyers bill.

Could we have limits imposed to confine it to those relatively minor kinds of disputes.

Mr. SEBELIUS. The court would make whatever is a reasonable attorney's fee.

The Supreme Court allowed me $200 one time.

When I got into the State senate, we changed the law and got paid for the appeal as well.

I'm not speaking for lawyers, I'm speaking for farmers. I've seen it happen time and time again. They won't even try for justice because of the rigamarole.

Let's have a vote on it.

Mr. JOHNSON. How can you say that we should have this kind of provision for the sale of livestock and not for the sale of grain, sugar, or anything else?

You are talking about change in the basic legal system in this country which is not warranted, despite the fact that we all recognize that small lawsuits do not pay.

That is probably a pretty good thing. Otherwise the courts would be more swamped than they are.

I yield back my time.

Mr. POAGE. All those in favor of the amendment to the amendment, say aye.

Opposed?

Mr. SEBELIUS. I know the results. I do not want any of these gentlemen's clients coming to me and crying about what the lawyer charges.

Mr. POAGE. The nos have it, and the amendment by Mr. Sebelius is defeated.

Mr. Bedell, maybe you should offer your amendment now as an amendment to the Thone amendment.

Mr. BEDELL. I would think not.

Mr. POAGE. Without being too technical, I think we could go ahead and adopt his and then let you offer yours.

Mr. BEDELL. That's all right.

Mr. POAGE. That may be incorrect parliamentary procedure, but I think we can get it done.

The Thone amendment limits this to the sale of livestock.

All in favor say aye.

Opposed?

It is unanimous, and the Thone amendment will be adopted.

Mr. Bedell you are recognized.

Mr. BEDELL. This is before you because it came to my attention by one of the farm organizations.

As our bill is now, it causes those people who process poultry and poultry products to not come under the cease and desist order and temporary injunctions procedure which is available to the packers and the stockyard administration to all of their meat processors, excepting those cases where poultry processors may also operate for meat products.

At least it is the opinion of some that they should come under the same regulations.

The committee should be aware of this situation and you should have a chance to vote on it.

In all fairness, I think I should bring up to the committee, that the poultry processors are opposed to this amendment. It could increase the opposition to the bill on the floor of the House by that group.

Mr. POAGE. Mr. Richmond?

Mr. RICHMOND. Yesterday I heard from a number of poultry producers and processors saying that they would be opposed to the bill. I think we would be hurting the chance of putting the entire bill through the House if we added such an amendment.

Mr. BEDELL. Opposed to the bill or this amendment?

Mr. RICHMOND. They are opposed to including poultry people in the livestock bill.

Mr. BEDELL. We need to understand what we are doing. We are not including the poultry processors in the bonding requirements of the bill.

The only thing that we are doing is bringing uniformity to the bill which would say that the Packers and Stockyard Administration, if they find violations of the act with poultry processors, can move forth with cease and desist injunctions and that sort of thing without having to go through the Federal court process as is now required and as would be the situation with meat processors.

Mr. RICHMOND. In my humble opinion, you make it much more difficult to pass the bill itself. What we are trying to do here is protect livestock producers, not take on the whole PSA.

Mr. JONES of Tennessee. Was this not in the original bill? Did not the committee take it out?

Mr. BEDELL. It was in the bill. When it was taken out, I mentioned in subcommittee that I understood there were some concerns as to whether or not it should be taken out.

The Chairman advised me to get what information I could and bring it back to the full committee.

Mr. JONES. Thank you.

Mr. BEDELL. It was taken out without, in fairness, a great deal of consideration of this particular item.

I'm not trying to push it one way or the other. I think we should at least know the situation. I think Mr. Richmond's point is well-taken.

I think we make it somewhat more difficult, but in my personal opinion, it seems to me it brings more equity and makes it so that it is fairer all the way through.

Mr. THONE. Would you yield briefly?

Mr. BEDELL. Yes.

Mr. THONE. We did go into this in some depth in the subcommittee. Particularly Mr. Poage and myself.

Some of the reasons given led us to decide that we did not want to extend it to the poultry industry.

As I recall, the balance which swung it over in that direction was that there were not really any qualitative problems in this area. We did not think that we should be putting them in here gratuitously unless there was a real need.

Mr. BEDELL. At least one of the major farm organizations thinks there is a problem.

Mr. THONE. That is, Mr. Datt, he talked to me this morning.

Mr. BEDELL. The situation is this. A large part of the poultry operations are integrated, but not all of them are integrated.

Indeed, many of them operate under contracts with people. There is some belief that those people with contracts or those private growers should have the protection.

If the poultry processor is operating improperly, or if he does not have adequate financial means, then the Packers and Stockyard Administration should have the same tools with which to work as they do with the meat packers.

That is the crux of the issue.

Mr. POAGE. Will the gentleman yield?

Mr. BEDELL. Yes.

Mr. POAGE. The subcommittee spent as much time on this as almost anything else.

The subcommittee did vote to take out the poultry producers and processors because, generally, they are the same people.

We thought it was rather ridiculous to provide somebody putting up the bond to protect himself and to prosecute himself.

It seemed that instead of having the adversary situation that you have in livestock, you would have a ridiculous situation of trying to give protection to the very man who does not need it.

Then I think there is another important factor in this. With me this might sway the whole thing.

We are trying too often, I think, to extend the coverage so far that we destroy the very things we set out to do.

We set out in this bill to try to provide protection for those people selling livestock to Midwest packers. This is really what we did. We wanted to take care of the American Beef Packer situation and not let that reoccur.

Now we move it further and further.

You can get the tent so big that it will blow away. Then rather than giving protection to anybody, it seems to me that we'll miss everybody.

It seems to me we have a bill that gives a great deal of protection to sellers of livestock. This is a livestock bill.

It is proposed that we take care of folks who are in the chicken business. Then why shouldn't we take care of people who are in the exotic game business or in the wheat business or any other business?

There has to be a point beyond which you do not go.

I think you can legally take in these people, but you can take in people who are growing turtles just as well.

The only practical thing is to keep it down to the well-known aspects of livestock.

Mr. BEDELL. I would like to make it very clear that this does not in any way place any bonding requirements upon poultry producers. It only has to do with the administration of the act. I want to be sure everybody understands.

Mr. POAGE. As long as the camel knows and not the hump.

Mr. BERGLAND. I know the gentleman has offered this amendment in good faith. There are probably more turkeys produced and sold in my district than any other district in the United States. Growers of all sizes, big and small. Some are independent; some are integrated—all sorts.

I know the industry and have talked with producers and others involved. I'm not aware of a problem in this particular area and I don't think we ought to include it.

I think the gentleman from Texas makes a valid point.

Is there a problem?

Mr. BEDELL. I do not know.

The farm organizations came to me saying there was a problem, and they felt it should be made uniform.

I checked with the packers and stockyards organization. They could not tell me the attitude of the department. They do not have that freedom, as you know.

I think it is fair to say that at least some of the individuals with whom I talked felt that this would make it more uniform and would be desirable.

Mr. JONES of Tennessee. Mr. Chairman, as chairman of the Dairy and Poultry Subcommittee, we stay in close touch with the poultry people as well as the dairy industry. I dare say that we have had no one in the poultry industry who has said one word to us about it.

They are pleased with it as it is.

Mr. FITHIAN. I was going to inquire about the half million dollar—which would not exempt most people under this setup.

Mr. BEDELL. This takes care of bonding for a meat packer. There is no bonding in this amendment that I'm talking about. It only says that you have to get a bond if you process under one-half million.

Mr. KREBS. I move the previous question.

Mr. POAGE. If there is no further discussion, all those in favor of the amendment by Mr. Bedell say aye.

Opposed?

All those in favor, hold up your hands.

The CLERK. Four.

Mr. POAGE. Those opposed?

The CLERK. Eight.

Mr. POAGE. There being a majority opposed, the amendment does not pass.

Is there anything else in this section?

Mr. BERGLAND. Mr. Chairman, I have a question not on this section, but on a section that we passed over.

I'm talking about section 201 on page 2 of the committee bill.

The language of this amendment extends the term packer to include, among others, meat retailers.

Under section 202 of the act, which is not described in this bill. I'm not sure what it means.

Mr. THONE. Will the gentleman yield?

Mr. BERGLAND. Yes.

Mr. THONE. The Kelly amendment, and I think we have a consensus on this amendment, will take care of that situation.

It will specifically eliminate the food retailers.

Mr. BERGLAND. Thank you very much.

I will defer my questions until the matter is pending.

Mr. POAGE. Are we ready to pass on to the prompt payment?

I want you to bear in mind that this does preempt some State laws and will weaken rather than strengthen the laws in Kansas, Oklahoma, and Texas.

I say that so that someone will not come out and think they are strengthening the law when they are weakening it in three of the major livestock States.

Mr. BALDUS. Are there other States which you are aware of?

Mr. POAGE. I'm not aware of any other.

Mr. THONE. It's a definition of the word "weaken." You have bonding requirements in some States which are unreal.

Yes, I suppose you could argue that this preemption on bonding would, in those instances, weaken various State bonding requirements. But the proliferation which we have now is almost totally unworkable.

Mr. BALDUS. Thank you.

Mr. POAGE. We come to the solvency test which begins on page 5. As far as I know, there is no opposition to that. At least I am sure there is none by the organizations that have been talking to us—either producers or packers.

If there is objection in the committee, we should raise it.

Does anybody have objection to section 5 of the bill?

Actually that simply provides that a packer operating while insolvent who fails to pay for livestock or does not have the required bond, the Packers and Stockyard Administration can issue a cease and desist order against him, and enjoin him from operating until the Secretary has reason to believe his operations will not be detrimental to livestock producers.

It simply gives the Secretary a way of stopping something that he finds to be dangerous before they go on and actually declare bankruptcy.

If there are no amendments there, then we will pass on to the trust provisions.

This is the most highly controversial section of the bill, I think.

This relates to the question of who has a lien on an inventory. This provides, in the event of packer bankruptcy, all of the packer's inventory of livestock, meat products, and the proceeds thereof shall be held in trust to pay off livestock sellers. That is, in trust for the producers.

I recognize and we all must recognize that heretofore packers have been borrowing money on those assets and giving a lien on them. That is the major thing, I think, that cut out the producers in the situation with the American Meat Packers.

There were liens on all of the livestock and the recently killed livestock even though it had not been paid for.

This provision provides, in essence, that ownership of livestock should not be considered as having been transferred from the livestock producer to the packer until the producer had received a payment for the livestock.

That is, even though they killed the livestock and held it in the cooler, it is still considered to be the property, for bankruptcy purposes, of the producer as long as he has not been paid.

The question becomes pretty much whether the producer who has not been paid should be protected or whether these assets should be available for the packer to use in order to get a greater line of credit.

He has unquestionably gotten a little more credit by the lender taking a lien on these assets as well as his other assets.

A case from my State is the *Samuels* case.

I think it had six decisions on it. Three of them were in favor of the producer and three were in favor of the statutory lien holder.

It finally wound up that the courts decided that regardless of what the inequities might be and regardless of what should be the situation, there was nothing in the law that gave that producer a lien on these assets in Samuels' hand.

The credit company which advanced money had a lien on them. The producers had no recourse.

This provision is pretty largely going to change the effect of the *Samuels* case. We are not trying to change any principal which the courts announced.

The court simply announced and indicated that they would like to hold the other way.

In each of the three cases where they held against the producers, they would have liked to hold the other way, but they held that there was no law.

This would give them the law which would be necessary to enable them to enforce a lien on behalf of the producer.

But there is objection to this. This is one of those things about which there is unquestionably a good deal of difference of opinion.

So you may want to discuss that.

Mr. KREBS. I wonder if you would be so kind as to comment on the rights of purchasers for value of this proposed legislation.

Mr. POAGE. There could not be innocent purchasers if the law has provided that the lien follows the goods until they are paid for.

They cannot be innocent because they know that somebody else sold them to Samuels or to the American Meat Packers. Or they sold them to somebody else.

So that lender knows that he's not going to get a lien because the law says that the innocent purchaser is the basis on which the *Samuels* case finally went off.

As I see it, the court said "Yes, we would like to protect the producers but there is no statutory law and the concern which loaned the money to Samuels had a right—that is, they were innocent at that time because there was no law giving anybody else a lien."

If we place a law on the statute books giving somebody else a lien, such as a mechanics lien—because this would follow the same principal—then they are not innocent persons.

Mr. KREBS. I understand what the chairman is saying; but it seems to me that this legislation, as I read it, is going to extend quite far down the chain of a purchase—so that it eventually involves meat food products.

My question is this: Are we not really setting up a pitfall? Are we really being fair to the innocent purchaser who is going to buy some meat products?

Mr. POAGE. I beg your pardon. I see what you're talking about.

You're not talking about the creditor, you're talking about the grocery store.

Mr. KREBS. I'm talking about the ultimate buyer.

Mr. POAGE. Yes.

I think there is merit in what the gentleman is suggesting there.

Maybe we are going a little too far in following products after they are out of the hands of the packer.

It should only apply so long as it is in the hands of the packer. I think that is as far as this goes, but I may be wrong.

Mr. BALDUS. I would like to question counsel, if I may.

I am referring to the bottom of page 10A and the top of page 11 where:

> All livestock purchased by a packer in cash sales and all inventories or receivables or proceeds from meat, meat food products, or livestock products derived therefrom shall be held by such packer in trust for the benefit of the seller.

Let us say that I am a distributor. I buy from the packer. I pay him. He has the money.

It is his obligation to hold that interest for the person who really owns that livestock.

But I, the distributor of the meat, in turn sell it to a retailer and have discharged my responsibility by paying hard, cash money.

They would not be able to come and claim the meat from me even though I have paid for it.

Mr. IMHOF. I believe that is the intention of the bill.

Mr. BALDUS. That would protect the person that Mr. Krebs is concerned about?

Mr. IMHOF. That is my understanding.

Mr. KREBS. Mr. Chairman, if I may direct a question to counsel.

Mr. POAGE. Yes.

Mr. KREBS. Are you saying that my concern—for lack of a better description—would be satisfied if we deleted the language on page 10A, beginning with line 16, following the word "sales," and up to and including line 18, including the word "from"? Does that take care of the situation?

Mr. IMHOF. Including "from"?

Mr. KREBS. That is correct.

In other words, the lien would only hold with reference to the packer, rather than some buyer down the line.

Mr. BERGLAND. Will the gentleman yield?

Mr. KREBS. Yes.

Mr. BERGLAND. As I read this provision, the purchaser down the line is exempted from the lien provisions in this regard. We are only talking, in this instance, of the proceeds from the meat sold.

Proceeds which were remitted to the packer were held in trust. I cannot see that this in any way affects the purchaser from the packing firm.

Am I correct?

Mr. IMHOF. I believe that is the intention of the provision. I am trying to assess the impact of what Mr. Krebs said.

Mr. BERGLAND. It was intended that we would exempt the packing firm from the provisions of this section. We will merely place in trust the proceeds derived from sale.

Mr. POAGE. We do not in any way change the present law with regard to the ultimate purchaser; that is, the butcher shop or the grocery store. We don't change the law with regard to them.

The producer has no lien on the meat in their inventories now, and I do not see that we give the producer any lien on anything that they have.

We give the producer a lien only on those products and the proceeds of products which are in the hands of the packer.

I think that it is clear that, having in no way changed the law as it relates to the grocery store, we have not put a burden on the grocery store. We have left them where they are.

I think there is an implication here by the very fact that we specifically give a lien on the proceeds. This would exclude a lien, by implication at least, on the goods in the hands of the grocery man.

So it would seem to me that it is clear that we do not affect ownership or liens beyond the packer.

Mr. FINDLEY. The language as now written requires the holding in trust only on the part of the packer.

Mr. POAGE. That's right.

Mr. FINDLEY. That should clarify the point I think.

Mr. POAGE. I think it does.

Mr. BALDUS. Is it not so that that section really prevents the packer from putting a lien on the chain?

Mr. POAGE. That's right. It does not affect anything in the hands of the grocer.

Mr. BALDUS. Otherwise he might have been putting a lien on a 10-day inventory which may have gone from indoors almost to the retailer and he would be prevented from doing this.

Mr. POAGE. We do provide that if he does do it and moves it, then the producer's lien attaches to the proceeds of the sale.

But that does not affect the retailer at all.

Mr. BALDUS. It would be his responsibility to describe those proceeds because it really belongs to the seller or the original owner of the meat until it is officially paid for.

Mr. POAGE. To me it seems clear.

Mr. FINDLEY. Mr. Chairman, even though I think the language on page 11 is clear, we do not want to cause any undue litigation.

I think the committee report should be explicit on this point.

Mr. POAGE. I think that is correct. I would agree with that.

Would that be satisfactory, Mr. Krebs.

Mr. KREBS. Yes.

Mr. POAGE. We will ask the staff to be sure that we make reference to this situation and specifically point out that we are in no wise changing the position of the purchaser of the meat from the packer.

Is there any other change which anyone wants to make in this section?

Mr. SEBELIUS. Are we in section 8?

Mr. POAGE. Yes.

Mr. SEBELIUS. I have an amendment there.

Mr. POAGE. It carries out your original suggestion?

Mr. SEBELIUS. Yes; $500,000.

In section 8, page 11, line 4, after the word "seller" and before the period insert the following: "*Provided, however*, That any packer whose average annual purchases do not exceed $500,000 will be exempt from the provisions of this section."

That is a marginal thing which may never occur, but if it does, it takes care of the little guy along the State lines who is dealing in meat.

The CHAIRMAN. I have no objection to the amendment offered by Mr. Sebelius, but I think we have neither sufficient members present or sufficient time.

I should like to advise members of my intention to offer an amendment striking the entire section. In an effort to avoid any parliamentary problems, however, I should first like to inquire of counsel if it is proper to move to strike it if the committee should amend it as suggested by Mr. Sebelius, although I support the gentleman from Kansas, I want to strike section 8. In the absence of that possibility, I would think that this amendment is wise.

Mr. POAGE. Is there any objection to this amendment?

Mr. GRASSLEY. I have a question of Mr. Sebelius.

Mr. Sebelius, are you sure that exempting purchases of livestock with this amount of money——

Mr. SEBELIUS. You are probably not going to exempt many people by it.

I am trying to take care of the border-line situation which will crop up between some of my people.

I live on the Nebraska line. We have some people who are basically Nebraska-inspected or Kansas-inspected, but they do buy and sell cattle.

I'm not trying to take a big chunk out of it. That's why I limited it to $500,000.

Mr. GRASSLEY. Are you sure that these are not the people who may be the ones who would cause the problem?

Mr. SEBELIUS. This is a local thing.

As far as the trust fund, we have not developed any problem there.

Mr. POAGE. For all practical purposes, these are merely locker plants?

Mr. SEBELIUS. That's right. Somewhere along the line somebody decides they have all the locker plants along one line.

I picked a low figure for the exemption. I didn't want it to come back and haunt us.

Mr. GRASSLEY. Thank you.

Mr. POAGE. Is there any objection to the amendment by Mr. Sebelius?

Hearing none, the amendment will be included.

That brings us to one other item.

I understand that there will be an amendment to offer for the prompt payment by the purchaser of the meat from the packinghouse.

Nobody here wants to offer that do they?

I think it was Mr. Harkin. He is not here.

Someone said they wanted to offer that. That will be in order tomorrow.

Mr. IMHOF. I believe that Mr. Thornton is trying to get back from another subcommittee hearing which he is chairing I believe it is his intention to offer an amendment in this regard.

Mr. POAGE. Whoever wants to offer it, it will be in order for them to offer it tomorrow.

I believe that covers all matters except those on which we will reserve the right to proceed on tomorrow.

Mr. Chairman, we have set a vote tomorrow at 10:30 a.m. There is an amendment by Mr. Bedell. It was an amendment to the Hightower amendment.

Mr. THONE. Mr. Chairman, I would like to also set a time for voting on the final bill, as we did on the last legislation we had.

I know we will have a speech from the chairman.

Mr. POAGE. We could ask for unanimous consent to vote on the bill not later than 11:30 a.m.

Mr. THONE. Yes.

Mr. POAGE. Is there any objection?

Hearing none, we will vote on the bill at 11:30 a.m.

Mr. THONE. Maybe you want to put in the provision that if anyone else has any amendments, it should be distributed by the staff by 5 this evening?

Otherwise you might come up with a number of them at the last minute.

The CHAIRMAN. I don't want to cut off debate.

Is it the gentleman's idea that we start the vote at 11:30 without debate on any amendments which are pending, and concluding with a vote on final passage?

Mr. THONE. That's correct.

Mr. POAGE. If there is no objection, we will do it that way.

The CHAIRMAN. I want to say that I'm sorry I had to be absent, but Mr. Wampler and I had an appointment with the Rules Committee on the grain inspection bill.

Tomorrow we are planning to meet at 8 a.m. for further hearings on the food stamp legislation which will conclude at 9:45 a.m.

Then further consideration of the grain standards will begin shortly after 10 o'clock.

I appreciate, Mr. Chairman, your handling the balance of this meeting.

I move that the committee adjourn.

Mr. POAGE. The committee stands adjourned.

[Whereupon at 11:55 a.m. the committee adjourned.]

# PACKERS AND STOCKYARDS ACT OF 1921, AS AMENDED

WEDNESDAY, MARCH 31, 1976

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
*Washington, D.C.*

The committee met at 10:15 a.m., pursuant to notice, in room 1301, Longworth House Office Building, Hon. Thomas S. Foley (chairman) presiding.

Present: Representatives Poage, de le Garza, Vigorito, Jones of North Carolina, Jones of Tennessee, Melcher, Mathis, Bergland, Bowen, Litton, Richmond, Nolan, Baldus, Krebs, Harkin, Hightower, Bedell, McHugh, Fithian, Thornton, Sebelius, Findley, Thone, Symms, Johnson, Madigan, Jeffords, Kelly, Grassley, Hagedorn, and Moore.

Staff present: Fowler C. West, staff director; Robert M. Bor, counsel; William A. Imhof and John E. Hogan, associate counsels; John M. Lindley, staff assistant; L. T. Easley, press assistant; John Baize and Alan Gray, staff consultants, Subcommittee on Livestock and Grains; James Culver, staff consultant, Subcommittee on Dairy and Poultry; Leon Geyer, staff consultant, Subcommittee on Domestic Marketing and Consumer Affairs; Jerry Jorgensen, staff consultant, Subcommittee on Department Operations, Investigations and Oversight; and Glenda Temple, staff assistant.

The CHAIRMAN. The Committee on Agriculture will come to order.

The committee meets today for further consideration of H.R. 8410, a bill introduced by Mr. Thone and Mr. Bergland to amend the Packers and Stockyards Act of 1921.

Under a previous unanimous-consent agreement of the committee, a vote will occur at 10:30 on the amendment of the gentleman from Texas, Mr. Hightower; and by further unanimous consent all other amendments which have not yet been either approved or rejected will be subject to a vote beginning at 11:30.

I will ask Mr. Hightower to present his amendment again so that it might be fresh in our minds.

Mr. Hightower?

Mr. HIGHTOWER. My amendment concerns page 10, on which I would strike lines 1 through 8 and substitute in lieu thereof the following:

SEC. 409. (a) Each packer, market agency, or dealer purchasing livestock shall, before the close of the next business day following the purchase of livestock and transfer of possession thereof, transmit or deliver to the seller or his duly authorized agent the full amount of the purchase price: *Provided, however*, That each packer, market agency, or dealer purchasing livestock for slaughter, shall, before the close of the next business day following purchase of livestock and transfer of possession thereof, actually deliver at the point of

transfer of possession to the seller or his duly authorized representative a check or shall wire transfer funds to seller's accounts for the full amount of the purchase price; or, in the case of a purchase on a carcass or "grade and yield" basis, purchaser shall make payment by check at the point of transfer or shall wire transfer funds to seller's account for the full amount of the purchase price not later than the close of the first business day following determination of purchase price.

(b) Notwithstanding the provisions of paragraph (a) of this section, the parties to the purchase and sale of livestock may expressly agree in writing, before such purchase or sale, to effect payment in a manner other than that required in paragraph (a). Any such agreement shall be disclosed in the records of any market agency or dealer selling the livestock, and in the purchaser's records and on the accounts or other documents issued by the purchaser relating to the transaction.

(c) Any delay or attempt to delay by a market agency, dealer, or packer purchasing livestock, the collection of funds as herein provided, or otherwise for the purpose of or resulting in extending the normal period of payment for such livestock shall be considered an "unfair practice" 'in violation of the Act.

The CHAIRMAN. Is there any additional discussion on the Hightower amendment?

Mr. HIGHTOWER. Mr. Chairman?

The CHAIRMAN. Mr. Hightower.

Mr. HIGHTOWER. Some members of the committee yesterday raised the question as to what would happen if the seller did not have an agent or was not physically present at the point of transfer and delivery and had no agent there to receive the check, either on that day or the following day.

What would then happen?

It is our contention that the obligation of the buyer, if he is there ready, willing, and able to pay, has been met.

I would like to direct a question or two to counsel.

Mr. Bor, if a buyer is at the point of delivery with the check in hand and has available for delivery a check in full payment, does this comply, you think, with the statute which we propose?

Mr. BOR. Mr. Hightower, I would say yes. In the normal circumstances if a buyer tenders the check for delivery and tenders payment for delivery, and if the other party is not available at that time or does not accept delivery, then he would be considered to have met his obligation.

We could certainly make clear in the committee report that that was the purport of this provision. That is, that if the buyer had tendered the check for delivery and the agent of the seller was not present, then the buyer had met the requirement of the amendment to H.R. 8410.

Mr. BEDELL. If that were to happen and if the person were not there to collect the check, then when would the packer or buyer be required to mail a check to the producer?

Mr. BOR. In my view, Mr. Bedell, if that circumstance were to come to pass then the buyer would have satisfied the requirement of this section of the act, and he would be under an obligation to send the payment.

But the fact that the payment was mailed or transmitted or made at a later date would not constitute an unfair practice under the act.

Mr. BEDELL. How long could he wait to send the check under those circumstances?

Mr. BOR. He would still have an obligation to make payment. There would not be any specific requirement in the act as to the number of days that he would have to satisfy in making payment.

The obligation would be to make a prompt payment. If payment had been made within a reasonable period of time, then my view would be that he would have satisfied the requirements of the act.

Mr. BEDELL. I am really very uncomfortable about this amendment, as you well know, because we have made a lot of phone calls to try to learn more about it. We found, at least in our area, that there is great difference of opinion.

The packers think this is going to be the ruination of all of them. The cattle people think it is important that it be passed.

If I understand you correctly, if I am a feeder and if I hire a trucker to haul my livestock to market or wherever it may be, and they are purchased there, and then I do not go and collect the check which is offered, then the packer would have thereby taken care of his prompt payment responsibilities. There would be no requirement that he send me the check. He could hold it for a week if he saw fit to do so.

Am I correct in that understanding?

Mr. BOR. There would be no requirement under the act that would apply in that kind of situation because he would have satisfied the requirement for making delivery of the check by having made tender of the check.

Mr. FITHIAN. Will the gentleman yield?

Mr. HIGHTOWER. Yes.

Mr. FITHIAN. Mr. Hightower and others clarified this for me yesterday. Is it not true that the commission person, who sells for you, would be the agent and accept the check and put it in the mail much as they do now?

Mr. BEDELL. If he sold through a commission agent?

Mr. FITHIAN. Right. The alternative is that they sell at the farm or feedlot in which case the point of transfer comes to be the scales, and the transfer would then be made to your agent which might be, in this case, a trucker or a seller if you hired one.

Mr. HIGHTOWER. If you are the seller, you have an obligation—that is, you would be naturally concerned about when and where you were going to be paid.

If you are not concerned about it, and if you are just going to leave it up to the buyer to get you the money at his convenience, then the buyer has no further obligation under the law.

Of course, he still owes you for it.

But if he is ready, willing, and able to pay at the point of delivery on the day of delivery, or within 24 hours thereafter, and if you make no effort to pick up the check, then he has no further obligation about seeing that it is delivered.

Mr. Bor, have you had any discussion with the Department with regard to section (b) of the proposed amendment? This is with regard to arrangements between the buyer and seller.

Mr. BOR. Mr. Hightower, we did have a technical suggestion which had been made by a representative of the Department for section (b).

Section (b) is the escape clause for the requirement in subsection (a) and provides that the parties can expressly agree in writing to different payment arrangements.

It was indicated to us that it might be desirable to allow the Secretary to prescribe the rules and regulations for the application of this section. There may be some circumstances where the parties are not of equal status. A small seller may be dealing with a powerful buyer, and through duress or otherwise, may be forced into an arrangement that he might not otherwise be happy with.

There may be other unforeseen circumstances where it would be desirable to put some control on the provisions of section (b).

So it was suggested that it might be desirable to have the first two lines read something like this:

Notwithstanding the provisions in paragraph (a) of this section and subject to such terms and conditions as the Secretary may prescribe, the parties to the purchase and sale of livestock may expressly agree in writing.

And so forth.

Mr. HIGHTOWER. Mr. Chairman, if there is no objection, I would like that the proposed amendment be revised to include that language.

The CHAIRMAN. Mr. Hightower asks unanimous consent to revise and reform his amendment to include the language just read by counsel.

Is there question?

Hearing none, it is so ordered.

Mr. Bedell?

Mr. BEDELL. I have a further question.

If I am a producer. If a packingplant comes to my farm and contracts to buy my cattle with the contract specifying that I deliver those cattle to a packingplant, and if I hire an independent trucker to haul the cattle to the packingplant, then how is the payment to be made and where and what are the requirements? I am talking about this amendment by Mr. Hightower.

The deal was made at my feedlot between me and the buyer. The deal called for the delivery of the cattle to the packingplant.

Mr. BOR. The provision requires that the payment be made at the point of transfer of possession of the seller or his duly authorized representative. I would imagine that that would be at the packingplant.

Mr. BEDELL. So, at the packing plane, it is either up to me to authorize the trucker to accept the money or for me to go to the packing plant; or if I do not, then I have failed to be there for the collection, and the packing plant can then send me a check at their convenience. Is that really the way it will work?

Mr. BOR. That in substance would be the case.

Mr. BEDELL. I will vote for the amendment, but I have to tell you that I have real concerns about these things. I hope that if we find there are serious problems that we can straighten them out before they get to the floor of the House.

The CHAIRMAN. I will recognize a member of the minority side for 3 minutes, if one wishes to speak.

If not, the gentleman from Wisconsin is recognized for 2 minutes.

Mr. BALDUS. I think this will help to resolve the problem that Mr. Bedell has.

In this paragraph (b), where you allow a separate agreement, if this becomes a problem with the trade, then the packer who wants to do so can probably say "Look, if you want us to mail you the check rather than deliver it, then we can do it." He could do it the same day or the next day.

That agreement would be a satisfactory agreement under paragraph (b). Is that not so?

Mr. BOR. That is correct.

Mr. BALDUS. So, they would probably move to accommodate the trade if there were a trade problem to overcome.

I would think that the disagreement would not only allow that but, with the amendment of counsel, this would put it under the supervision of the Department.

The CHAIRMAN. If there is no further discussion, the vote occurs on the amendment of Mr. Hightower, as revised.

All those in favor of the Hightower amendment, signify by saying aye, those opposed, nay.

The ayes appear to have it. The ayes have it. The Hightower amendment is agreed to.

Judge Kelly, do you have some amendments?

Mr. KELLY. Yes, Mr. Chairman. I have an amendment to section 201, as it appears on page 2.

I would like now to read it for you.

On page 2, beginning on line 1, strike section 2 and add the following new language:

"Sec. 2. Section 201 of said Packers and Stockyards Act (7 U.S.C. 191) is amended to read:

"SEC. 201. When used in this Act the term "packer" means any person engaged in the business (a) of buying livestock in commerce for purposes of slaughter, or (b) of manufacturing meats, meat food products, or livestock products in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce: *Provided, however,* That nothing in this section shall affect the jurisdiction of the Federal Trade Commission with respect to retail sales of meat, meat food products, livestock products in unmanufactured form, or poultry products as provided in section 406 of this Act.'

Mr. Chairman, the purpose of this amendment is to accomplish two things.

One is to leave the definition of packer as it appears in the existing law precisely the same as it is now without any change as to the subsections (a) and (b) of section 201.

Then I would shorten the existing law by striking subsections (c) and (d).

The reason for this is that the committee bill makes some changes which are said to be innocuous, artful, or otherwise in subsections (a) and (b).

But I think it is quite clear that every time that we make any kind of change in the law, then there is going to be a heyday in the legal profession to try to find out what these changes mean.

It is going to make everybody in the meat industry nervous until this is accomplished.

The existing law was passed in 1921. It was amended in 1958. It certainly has the stability that comes from time and understanding. It should not be changed unless necessary.

My discussions with the departmental representatives are that (a) and (b) in existing law are adequately understood and stable and should not be changed.

Mr. HIGHTOWER. Will the gentleman yield?

Mr. KELLY. Yes.

Mr. HIGHTOWER. I notice that the word "processing" is amended. The print we have says "manufacturing or processing" and the amendment that you have says "manufacturing or preparing."

Mr. KELLY. Let me read it. I think you are reading the committee bill.

Mr. HIGHTOWER. I beg your pardon; I am.

Mr. KELLY. What I am trying to do is to leave the law as it is unless we have a reason to change it.

In adding a new subsection (c), the purpose is to cover the box beef situation. The language which appears in the amendment which you have which reads "of marketing meats, meat food products, or livestock products in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce" is language that I have gone over with Department representatives.

As I understand it, this would be satisfactory language to cover the box beef sequence.

Mr. BERGLAND. Will the gentleman yield on that point?

Mr. KELLY. Yes.

Mr. BERGLAND. I fully concur in the gentleman's logic in that we ought not have this act getting into and involved with the retailer in meats because I don't think it works. I don't think there is a need.

At the same time, there have been certain persons involved in the box beef business whose business ethics have come into question of late.

This amendment would then authorize the Secretary to impose the provisions of the law, if the box beef merchant were a wholesaler.

Clarify one point.

There is within my district a chainstore organization. It is relatively small. They buy box beef from a packer in Iowa, truck it up, cut it at a central place, and distribute to their 80 stores in my district.

It is an in-house operation.

Would they be covered by this provision?

Mr. KELLY. It would be the intention that they not be covered. Because that is a retail organization.

If there were separate corporations, one doing the distributing for a connected corporation which was in retail, then I think it probably would cover it; but as long as it is a single organization, engaged in a retail operation, I would think that it should not be covered under this provision. They would be a retailer and not a wholesaler.

Mr. BERGLAND. That clarifies it. I think it is a good amendment.

Mr. THONE. Will the gentleman yield further?

Mr. KELLY. Yes.

Mr. THONE. The gentleman from Florida, Mr. Kelly, and myself and several other people including departmental people have worked over this section now for about 2 or 3 weeks. This is a consensus. I think everyone agrees now that this section fully covers what we were trying to get at. We fully support and endorse the Kelly amendment.

Mr. BERGLAND. I have a question of counsel.

This extends the definition of "packer" to apply the provisions of section 202 of the law.

What are those sections?

Mr. BOR. Could you repeat your question, Mr. Bergland?

Mr. BERGLAND. This section amends the definition of a "packer" to bring certain persons under the purview and authority of section 202 of the act itself.

What are the provisions of that section 202 not defined in the committee bill. I am not sure myself.

Mr. IMHOF. First, it would be unlawful for a packer to engage in or use any unfair, unjustly discriminatory or deceptive practice or device in commerce. It would be unlawful to make or give in commerce any undue or unreasonable preference or advantage to any particular, et cetera. It would be unlawful to sell or otherwise transfer to or for any other packer, or any live poultry dealer, or handler, or buyer, or otherwise receive from any packer any article for the purpose or with the effect of apportioning the supply in commerce between such packers, et cetera.

It would be unlawful to sell or otherwise transfer to, or for, any other person, or buy, or otherwise receive from such person with the effect of manipulating or controlling prices in commerce, or creating a monopoly, or buying—and it goes on.

Mr. BERGLAND. That clarifies it. Thank you very much.

I think it is an excellent amendment.

The CHAIRMAN. If there is no further discussion, the question occurs on the amendment of the gentleman from Florida, Mr. Kelly. All those in favor, signify by saying aye.

Those opposed?

The ayes have it, and the amendment is agreed to.

Mr. Kelly, do you have additional amendments?

Mr. KELLY. It is my understanding——

Mr. BEDELL. Will the gentleman yield? I think we should give him a round of applause for having accomplished the passage of an amendment.

Mr. KELLY. It is a reverse arrangement I might say.

It is my understanding, Mr. Chairman, that there is an amendment to strike the provision regarding the inclusion of a trust in the committee bill.

It would seem in the sense of orderliness that we could take that up first. The amendments I have would have no application if the trust——

The CHAIRMAN. I understand.

Perhaps this would be a good time for the Chair to offer his amendment to strike section 8 in its entirety.

This section appears on page 10(a) of the committee print and imposes an implied trust on the receipts of the packer for all unpaid cattle and livestock purchases.

The concern I have is that the bill, as it now stands, provides for universal national bonding of packers prompt-payment requirements, including the Hightower amendment, and cease-and-desist orders and the use of injunctions by the Secretary.

In addition, it provides for cause of action in the Federal courts for violation of the provisions of the act. These are civil damage actions.

In my view, the further addition of the implied trust could easily be considered by our colleagues on the floor as going too far.

I understand the concerns of the cattle- and livestock-feeding industry regarding the problems of bankruptcy that exist.

Without section 8, however, I believe this legislation offers the greatest single body of legal protection to any segment of our economy against failure of payment or unfair practices regarding non payment.

I would like to see the bill pass, but I feel that it may pass with the inclusion of section 8. This could make passage more difficult.

Some of the independent and smaller packers feel that this provision will inhibit their ability to obtain credit or will increase the cost of credit since normally, the credit providers require security on accounts receivable which would be diminished to some extent by this trust requirement.

Is there further discussion?

Mr. BERGLAND. Mr. Chairman, I think I am opposed to the gentleman's amendment.

I need more information, however.

Would this in any way affect a packer who pays for the livestock as it is delivered to his place of business? He would not be affected by this, would he?

The CHAIRMAN. He would not be affected directly. That is not the real problem, however. It is more accurately and more importantly a question of placing a priority lien on his accounts receivable and the impact this would have on his ability to get credit at a certain rate of interest.

Mr. BERGLAND. Only in the event of a bankruptcy proceeding would it come up. It would in effect safeguard the equity of the producer who delivered his livestock in good faith, and the packer had for some reason offered that livestock or those products as security for a loan.

In the event of a bankruptcy proceeding, in the absence of this amendment the person who held first lien—it may be a bank or in the case of Iowa Beef it was the General Electric Acceptance Corp.—the producer would lose control over his livestock.

The only protection he has in the bill as written would be the security offered by the bonding requirements.

To the extent that the bonds carried by the packer were sufficient to cover the liability to the producers, they would be protected. But if the bond were short and we only have limited bonds provided for here, the packer could still suffer exposure to liability.

The CHAIRMAN. Yes, that is correct.

Mr. BERGLAND. In light of that, I think we ought to keep the protection in the act.

The CHAIRMAN. If the gentleman will yield, I would like to say that the whole bill, as I see it, is largely devoted to providing protection to cattle feeders and stockmen against this kind of eventuality.

There is a bonding requirement, however limited it may be, which goes to that purpose.

The provision for a prompt payment was designed to accomplish the payment as soon as possible in order to prevent any such occurrence.

Finally, the cease-and-desist orders and injunctions are designed to give the administration of the Packers and Stockyards Act the opportunity to correct abuses or to move in on the improperly conducted packing operations.

All of these provisions seek to directly protect cattlemen.

Then, beyond section 8, there is the possibility of lawsuits.

If we have taken the position of simply barring any State from having bonding requirements and substituting therefor the proposed trust, or if we had eliminated prompt payment in favor of the trust to insure protection, I might feel better. Piling numerous protections one on the other, in my mind, after the other of these protections, it raises the question of whether the bill is overbalanced and overreaching in its efforts.

There is only one other amendment I can think of which would go farther, and that would be pledging the full faith and credit of the United States to cover any unpaid for livestock. In reality, that is the only way you guarantee that no one will suffer any conceivable loss.

Looking at the whole spectrum of commerce, I see few if any elements that even approach enjoying the protections provided here, even without section 8. Mr. Poage?

Mr. Poage. I have to agree with the Chairman. This bill does give the livestock producers more protection than any bill I have ever known for sellers anywhere.

We catch these people and demand that they come up with the money. We try to take care of the fellow who does not care enough about getting his payment. We are trying to take care of everything.

I cannot believe this is such an unusual situation because basically it is this. Basically, this is the same thing as a mechanic's lien, which is recognized by most of all the States in the Union.

It is the same thing as the vendor's lien which practically every State, as far as I know, recognizes.

It really comes to a question, as I see it, of who should have the right to take the property in case of bankruptcy. This is the only place where there is any importance in reference to the failure on the part of a purchasing company.

These assets which have not been paid for—and this relates only to the unpaid inventory—if the packinghouse buys a truckload of cattle and pays for it, then, of course, the general creditors claims or the specific lienholders can follow that asset.

But it is only the unpaid assets that we are talking about here.

What we are trying to do is to say that until the packing plant has made payment, then some other creditor will not be able to grab this property and take it away from the vendor who supplied it or the mechanic who supplied it.

It seems to me that this would be right in line with our general policy.

The Chairman. Will the gentleman yield?

Mr. Poage. Yes.

The Chairman. I do not necessarily think there is anything wrong with the concept of a priority lien. My objection is that it is added on to a whole series of primary protections which I feel would be effective by themselves.

In short, I feel the end product is excessive. As I have said, if there were no prompt payment or bonding requirements, I would feel more comfortable about providing this protection. When we construct a bill containing provisions for bonding, cease and desist orders, injunctions, and suits in Federal court, I think the trust is too much.

Mr. POAGE. Let me point out one more situation. This provision is put in here largely in answer to the Samuels case. In that case three courts held that there was an implied lien, even without any statutory provisions.

Three courts held, including the Supreme Court, that while there might be the implied lien, that there was no Texas statute creating a lien. The court was not going to create one where the statute did not provide for a lien.

But they clearly indicated that the legislative branch had the right to create such a lien if they wanted to.

It was almost an open invitation to us to act for creating the lien. That is really what the subcommittee did.

We accepted the invitation of the court and created a lien that they suggested we might want to create.

I think that is really the reason for including this.

I know there is duplication or at least it provides for a multiple protection for the seller.

I know that any one of these four items in this bill gives a good deal of protection which the seller has not had.

But it just does not seem to me that there is anything wrong with this provision that is section 8.

For that reason, it does not seem to me that it is necessary to take it up. It will not hurt any honest dealer. It will simply say that "You either pay or you hold this stuff in trust for the seller until you do pay."

The CHAIRMAN. Mr. Sebelius?

Mr. SEBELIUS. I am not sure this is clear in my own mind, but there was a conversation earlier here that perhaps we are impinging upon the jurisdiction of the Judiciary Committee by creating a lien. Has anything more been mentioned on that?

Mr. BOB. Mr. Sebelius, if this particular provision were an amendment to the Bankruptcy Act, then we might have that kind of a problem.

However, it is not addressed specifically to bankruptcy. I discussed the issue with the Parliamentarian. The way it is presently worded he did not think we had that kind of problem, at least in the conversation I had with him.

Mr. SEBELIUS. I heard that it could be subject to a point of order, but now he thinks it is not. Is that correct?

Mr. BOB. If it had been worded in a different fashion so that it amended the Bankruptcy Act and was specifically applicable to bankruptcy cases, that would be the case. But it is more generally worded than that. In view of that situation, he didn't raise any question with me.

Mr. HOGAN. I might add that inasmuch as this is a trust as opposed to a lien, it falls in a different category and therefore it does not substantially affect the Bankrupty Act. A lien would fall more in the category of affecting priorities such as secured transactions as they

are recognized under the Uniform Commercial Code and then take or assume a priority under the Bankrupty Act.

But a trust relationship such as that that would arise as a result of section 8, I think falls outside of the purview of the Bankruptcy Act. The trust property would not become an asset in the bankruptcy proceeding.

Mr. SEBELIUS. In closing I might say this. I am inclined to agree with you and Mr. Poage that we are adding one more thing. We may overload this vehicle. I have discussed this with local people in my district and State. They feel that inasmuch as Kansas will get less out of it, I am right in not being too excited about passing it.

My State is taken care of, and we feel OK about that. They seem to feel that the bond is only for 2 days' kill. They feel that is inadequate if it is just the bond alone. So I will have to make up my mind when I get to final consideration.

The CHAIRMAN. Mr. Richmond?

Mr. RICHMOND. I would like to speak in favor of the amendment.

Certainly section 8 is not really necessary for the safety of the farmer. Any farmer who is in doubt about selling to a packer can request an immediate wire transfer from the packer's bank.

So if there is any possibility of the packer going bankrupt or being weak, then the farmer has nothing more to do than to go to his country bank, and require a wire transfer of his money. He is bonded for 2 days and the money will arrive in a matter of hours.

If we do not take section 8 out, then you are inflicting an undue hardship on several hundred small independent packers throughout the United States who tell me their financial charges will be absolutely ruinous to their profits.

In other words, it may force any number of independent packers out of business.

I think the farmer has any number of good safeguards in the bill without section 8. I think if we eliminate section 8, we will at least keep a lot of the small independent packers in business.

Thank you.

Mr. BERGLAND. I do not think any member of the committee wants to devise a policy that would systematically destroy the independent packing industry or the small packers.

Would you amplify on that?

Mr. RICHMOND. As I read the bill, without section 8, any farmer under the 2-day or 3-day bond can request wire transfer on his funds and get actual cash.

Mr. BERGLAND. I understand that.

Mr. RICHMOND. In the American Beef case, any farmer who was in doubt of shipping beef to Iowa could have gotten a wire transfer. He would have been bonded for those 2 days.

Mr. BERGLAND. I do not think that's entirely correct.

Why would the independent packers be unable to get financial help?

Mr. RICHMOND. With section 8 the independent packers will not be able to get loans on their inventory because they in effect will not own the inventory even though they have issued a check against it.

Mr. BERGLAND. If they paid for inventory, they could clearly establish title.

Mr. RICHMOND. The check would have to clear, which might be 1 week to 10 days. There is no way the independent packer can also get an inventory loan.

Mr. BERGLAND. So, for purposes of offering security——

Mr. RICHMOND. So, for purposes of financing his business, the independent packer will be in trouble.

Mr. BERGLAND. He cannot establish clear title to the property until the check clears the bank?

Mr. RICHMOND. The independent packers use inventory in financing. In the case of country banks working with big city banks, it could take 1 week to 10 days for the check to clear. So what we are doing effectively is causing undue hardship on 300 small independent packers and not really adding much protection to the farmer, who already has plenty of protection without section 8.

Mr. BEDELL. It is correct, however, that the money is not deducted from his account until such time as the check clears.

The question is really whether he should be permitted to borrow on the livestock that he has purchased before he has paid for it, or whether he should not be able to borrow on it until it is paid for.

Mr. RICHMOND. The independent packer pays for it in the form of a check. If it takes 10 or 12 days float time for the farmer to actually collect his cash and if you force the packer to remove that parcel of his inventory from the overall inventory loan, then you effectively raise the packer's financial charges terribly. I am told that 300 independent packers will suffer quite seriously.

It is not necessary to protect the farmer because he has plenty of other protection in other sections of the bill.

Mr. KELLY. Will the gentleman yield?

Mr. RICHMOND. Yes.

Mr. KELLY. You are not suggesting that the packer would give a check when he had no money in the bank?

Mr. RICHMOND. Of course not.

Mr. KELLY. Then what you are saying is that he pays for the beef and then he cannot use it for financing even though he has paid for it.

Mr. RICHMOND. Under section 8, that is the case.

Mr. KELLY. That's why I think section 8 ought to be removed.

Mr. RICHMOND. I agree with you.

The CHAIRMAN. The time of the gentleman has expired.

Mr. Thornton?

Mr. THORNTON I basically have a parliamentary inquiry. In the event that the motion now pending is not agreed to, whether an amendment to section 8 would then be in order.

Mr. CHAIRMAN. The gentleman is correct.

Mr. THORNTON. Thank you.

The CHAIRMAN. Mr. Thone?

Mr. THONE. I would oppose the Foley amendment.

Frankly, the core of the bill is section 8.

The chairman, as usual, is very persuasive; but to paraphrase a great Justice of the Supreme Court, I hope "eloquence would not set fire to reason" on this point.

The CHAIRMAN. Will the gentleman yield?

Mr. THONE. Very briefly.

The CHAIRMAN. I do not believe this section was the core of the bill when the gentleman introduced it because he introduced it without section 8.

Mr. THONE. Mr. Chairman, now back to reason.

In all of the hearings that we held, especially the field hearings in Amarillo and Omaha, it was obvious to those of us there that without section 8 you are not really doing much at all for the parties who have been aggrieved by these bankruptcies and the tremendous loss of money.

As I read the statistics, 180 of the packers have gone into bankruptcy in about the last 15 or 16 years. An average of 10 a year.

In fact, in 1975, you had 10 packers in bankruptcy.

Sure. American Beef, Mr. Richmond, highlighted this matter.

Let me tell you personally from experience.

This is why I got concerned about the situation.

For some time I have thought that the packers and stockyards administration is a paper tiger. I think the administrators concede this. We have been working on some general legislation for a long time.

But after the American Beef bankruptcy, a young couple came to see me one day after an agricultural meeting. They had been farming 5 years. She was about 6, or 7, or 8 months pregnant. They had a $30,000 rubber check from American Beef.

As you can imagine, before the conference was over, they were both in hysterics.

This to them could just as well have been $300,000. They can take drought. They could not fight something like this.

I walked away from that meeting saying that here was one Congressman who was going to try to do something for these people.

That is what we are trying to do here.

Mr. Foley is correct. We have put in some tightening of the cease-and-desist provisions. We have put in some injunctive relief that has been long needed.

However, let us be very clear here to point out that as far as the bonding requirements of H.R. 8410 are concerned, we are doing the packers, Mr. Richmond, with whom you express some concern here, a real favor.

We have almost all of the producing States with a proliferation in this area that has really hindered commerce and the whole operation.

We are standardizing. We are preempting here. As far as prompt pay is concerned, we are doing those people a big favor.

As far as prompt pay and bonding are concerned, there has been a proliferation. We are helping the packing industry and not that producer who has been ripped off.

The CHAIRMAN. Will the gentleman yield?

Mr. THONE. Yes.

The CHAIRMAN. You can either establish bonding requirements in all States, as we have done, or you could prohibit any State from requiring bonding. You can standardize in either direction.

Mr. THONE. But referring to the comment of Mr. Sebelius, sure Kansas is content right now. They have a staff-bonding requirement in their new law.

You have one of the strongest prompt pay provisions of any of the 50 States right now. So does Texas and Oklahoma.

So I can understand why they are not too concerned in this particular area.

The key then comes back to section 8, this lien trust provision.

I can say that the strongest argument is that we are finally going to get equitable treatment.

How can anyone argue that a packer should be able to commit property for which he has not paid for and which he does not actually own, to a third party? And then allow the third party to stand ahead of the farmer if the packer fails. That is exactly the situation of American Beef where General Electric went ahead of all these producers. That included this couple that I was so concerned about in Nebraska.

I yield.

Mr. RICHMOND. It is done every single day, millions of times a day in general business.

I do not know why the farmer, whom we are protecting by every other section of the bill, should not be in perfect shape without section 8.

This is the way business is done in the United States today.

Corporations buy merchandise and get inventory liens on the merchandise the minute they buy it.

Mr. THONE. Except that you are dealing here with a commodity that is very perishable. It loses its identity immediately. The farmer loses control immediately when the livestock enters the packer's hands. The carcasses move rapidly through the marketing channels. A small farmer sells his entire yearly output at one time.

So his entire yearly income is at stake here. You have those factors which are unique here.

Mr. RICHMOND. That is why we are bonding.

Mr. THONE. They are bonded by the State laws.

Mr. RICHMOND. The corporations are not bonded.

The CHAIRMAN. The time of the gentleman from Nebraska has expired.

The Chair does not want to restrict debate on this amendment. There may be others, however; and we are under unanimous consent agreement to begin voting at 11:30 irrespective of whether or not all the issues and amendments have been discussed.

I believe it would be unfortunate if there were no opportunity for debate on those other amendments because there was insufficient time. If there is no objection, the Chair would like to move the previous question on this amendment.

Mr. FITHIAN. Reserving the right to object, Mr. Chairman.

Before I vote I would like to have one bit of clarification.

I am neutral on this. I felt originally that it ought to be there.

This morning at the behest of Congressman Sharp I called a small packer in our State and talked about the extraordinray cost of credit. He could not use his inventory.

Is there any way—whether the chairman's amendment passes or fails—to allow the packer to use as collateral that portion of his inventory which is paid for?

The CHAIRMAN. The problem is that the usual procedure in obtaining credit is for the firm to pledge all of its accounts receivable. Unfortunately, you cannot legislate how banks will react to a particular provision of law.

The assertion made by the packers, which I think has some merit, is that the imposition of this trust provision is going to reduce their credit worthiness to some degree and increase their costs.

It is difficult to calculate the true impact. I do know, however, that there is nothing we can do to convince banks that they should not react unduly to this amendment. They will react as they see fit because they are able to make their own determination on the credit worthiness of their debtors.

Mr. FITHIAN. There is no way of dividing it?

The CHAIRMAN. The other way to do it is through an exemption. There is a $500,000 annual volume exemption in this amendment, but that is small indeed.

Mr. POAGE. This amendment does not do anything except what you have suggested. It prohibits the granting of a lien upon the unpaid-for assets. They can grant all of the liens they want to, and they will be perfectly good on anything that they paid for.

There is nothing in this amendment that takes away the use of most of the inventories.

The only exemption from a contractual lien is the unpaid-for inventories. Frankly, I do not think it is fair to put a lien on something that you have not paid for.

Mr. FITHIAN. I agree.

Mr. BEDELL. Normally in business, for example, if you would borrow on your accounts receivable they will not loan you 100 percent of those accounts because they would figure that some of them might be bad and you could not borrow on all of them.

The same would be true in this case with bankers I should think in that they would not loan 100 percent on the inventory because they would feel a part of it was not paid for.

But certainly that which is not paid for serve as security in the same manner as it would otherwise.

Mr. FITHIAN. I thank the gentleman.

I do not want to prolong this reservation to object, but I yield to Mr. Richmond.

Mr. RICHMOND. I think the gentleman from Iowa pretty much explained it. As far as the honest legitimate packers are concerned, once he writes a check he has paid for it. If the check should take 7 to 10 days to clear in some country bank 2,000 miles away or 1,000 miles away, the packer should not have his financing costs double on him because of that reason. He has technically paid for that inventory when he wrote the check.

The farmer can request a wire transfer if he has any doubt.

Mr. POAGE. Will the gentleman yield?

Mr. FITHIAN. Yes.

Mr. POAGE. Of course if the check has not cleared, the packer still has the money in the bank.

The packer still has all of the assets until that check clears, and his cash assets have not been depleted either.

Of course, it is perfectly true that until the check clears it does not show up.

But the packer has money there until the check clears.

Mr. HAGEDORN. There have been examples bond companies can cancel on 30 days notice. So this backs up the farmers. I don't think any credit institution would need this necessary collateral to finance this. Therefore, I think it is an improvement in the bill and should be left in the bill. I am talking about Section 8.

Mr. FITHIAN. I withdraw my right to object.

The CHAIRMAN. If there is no objection, the previous question is ordered. The vote is on section 8. All in favor, will respond aye, and those opposed no.

The Chair is in doubt. All in favor of the amendment will raise their right hands.

The CLERK. Eight.

The CHAIRMAN. Those opposed?

The CLERK. Eighteen.

The CHAIRMAN. There being 8 ayes and 18 noes, the amendment is not agreed to.

Mr. THORNTON. Mr. Chairman, I have an amendment.

The CHAIRMAN. The gentleman will state it.

Mr. THORNTON. Mr. Chairman, while the amendment is being circulated, I should like to say that I agree with the position stated by the Chair that an unlimited trust can create grave problems in credit for small packers.

It has been compared to the mechanic's lien, but the trust is unlimited in scope.

Unless a modification is made, a person could hold a hot check and some 6 months later, or when the packer goes into financial difficulty, could present that check, claim a trust relationship, and be paid before the entire flow of normal credit which would occur between the time he received a hot check and the time that the business gets into trouble.

Therefore, I think that a couple of changes are needed to restrict the trust.

The amendment which I propose would say that in order to preserve the trust and in order not to close the trust, the seller must file a claim with the Secretary and give written notice to the packer within 10 days of the final date for making a payment under section 409 or within five business days after receiving notice that the check has been dishonored.

In addition to this, Mr. Chairman, I think that the language of the bill or of the report should clearly reflect that the bonding company does not stand in the place of the seller with regard to this trust agreement.

He could not claim to be protected by the trust when it comes to recovering a payment on his bond.

I am concerned whether there might be an overlap of the bonding agreement and the trust agreement whereby the bonding company could assert that his bond was for the benefit of the seller and that he would have the advantages of the seller through this trust arrangement.

I think the report might clear that up. There might be some modification of language if necessary, to insure that the bonding company does not have the advantage of the trust agreement.

Mr. POAGE. Will the gentleman yield?

Mr. THORNTON. Yes.

Mr. POAGE. Why do you figure that any issuance would give the benefits to the insured. The insurance company gets the benefits of the payment to the insured.

Mr. THORNTON. However, if the payment by the bonding company is to the seller, under ordinary bonding relationships, that bonding company, the person who pays the bond, has available to him any rights which the seller would have had.

That seller would have this trust right. Therefore, the bonding company could pay the bond and then move in against the packer through the trust agreement and realize benefits.

Mr. POAGE. Why shouldn't they?

Mr. THORNTON. Because I don't think the intent of the statute is to protect the bonding company.

Mr. POAGE. To the extent that you make that bond cost more you are charging the producer that much more.

That bond has got to be paid for by the producer. That has been the fundamental thing that has bothered me about this whole procedure from the very beginning. For a good many years I have refused to support these things because I think that the insurance is going to cost more. The premiums on the insurance bond and the higher interest rates and all of these things are going to cost more than we can save for the producer.

You are simply going to make that bond cost a good deal more than it is going to cost otherwise.

Mr. THORNTON. If the gentleman would allow me to continue, I made an error in mixing two items in one presentation.

The amendment before the committee does not relate to the bond or to any change in report language.

I was merely trying to mention two things that I consider needing correction.

The one provision, which this amendment does reach, is the cutoff date for the trust.

A seller would have to give notice in a reasonable period of time, that he expects to pursue this section of the bill.

The CHAIRMAN. Is there any further discussion of the amendment?

Mr. THONE. Mr. Chairman, I oppose the amendment and I hesitate to do so, Mr. Thornton, but it seems to me that this weakens the trust provision considerably. As an eminent legal scholar and former attorney general in the State of Arkansas, I think that you can see that it guts it.

Mr. THORNTON. I don't think that it guts it. I think it weakens it in that it makes it an affirmative duty upon the unpaid seller, who has notice that he is not being paid, to alert the world to his unpaid claim.

Mr. THONE. Mr. Thornton, how does he know in the 10-day provision that he has been unpaid? He has not taken affirmative action as you put it.

This is frequent in our area.

You are not dealing with sophisticated people here. I know some of the neighbors we have in our neck of the woods who carry these checks around for quite some time. You would concede this case in Arkansas, would you not?

Mr. THORNTON. If the gentleman would yield, perhaps anyone who carries a check around for 10 days—of course, he has received it. The 10-day period was to allow mail delays in delivery of the check.

A person who would carry the check around in the pocket for an extended period of time might be indicating that he does not need the money.

Mr. THONE. As a matter of fact, I went through some of the claims in the American Beef case. This will surprise you. As I remember, one producer in my district and his family had $900,000 before it was all over in this American Beef situation. He will get along all right; he is doing OK. He has the resources where this won't hurt him at all.

But this little fellow over there who gets the check in the mail and who is busy out in the field and does not pick up his mail for a day or so perhaps, and then it lays in the kitchen awhile; he would be the one adversely affected by your amendment.

I frankly think, Mr. Thornton, that it would gut the lien section and I would strongly oppose it.

The CHAIRMAN. Without objection, the previous question is ordered on the Thornton amendment.

All in favor of the amendment, raise your right hands.

The CLERK. Fifteen.

The CHAIRMAN. Those opposed?

Mr. THONE. Mr. Chairman, I ask for a rollcall vote.

The CHAIRMAN. The gentleman from Nebraska asks for ayes and nays.

All those Members supporting the amendment will respond aye when their names are called. Those opposed will respond with nay.

[The rollcall follows:]

Ayes: Representatives Poage, de la Garza, Jones of North Carolina, Bowen, Litton, Richmond, Krebs, Hightower, McHugh, Fithian, Thornton, Sebelius, Findley, Kelly, Foley, Mathis (by proxy), English (by proxy).

Nays: Representatives Jones of Tennessee, Bergland, Nolan, Baldus, Bedell, Thone, Symms, Madigan, Grassley (by proxy), Hagedorn, Moore, Vigorito, Melcher (by proxy), Johnson.

Present: Wampler (by proxy).

The CHAIRMAN. The clerk will report the results.

The CLERK. Seventeen ayes and fourteen nays.

The CHAIRMAN. There being 17 ayes and 14 nays, the amendment is agreed to.

Mr. DE LA GARZA. I have an amendment.

All of the good of this legislation will be for naught if we do not authorize the funds.

I think this should be done annually so that we can have fresh funds every year.

That is the thrust of the amendment, otherwise known as the de la Garza amendment.

The funds should be authorized every year in order that we might appropriate the necessary funds to operate.

It is a new section at the end of the bill.

The CHAIRMAN. The Chair would like an indication of how many members have amendments which have not yet been offered. Mr. Thone, Mr. McHugh, and Mr. Moore appear to have amendments.

Mr. MOORE. Mr. Chairman. It is a brief substitute.

The CHAIRMAN. Are there other amendments?

Mr. BOR. Mr. Chairman, there are a couple of technical amendments that the staff would like to suggest which do not change the substance.

The CHAIRMAN. We have four amendments, including Mr. de la Garza's, and two technical amendments from the staff. That constitutes six amendments.

Mr. BOR. Mr. Chairman, I understand Mr. Harkin has also reserved the right to propose an amendment.

The CHAIRMAN. We have five amendments then and two technical amendments.

I wonder if it would be agreeable to ask unanimous consent that the sponsor of each amendment be allowed 2 minutes to present arguments in favor of his amendment and that two other members be accorded 1 minute each.

Mr. KREBS. I reserve the right to object.

The CHAIRMAN. Yes.

Mr. KREBS. I will withdraw my objection if we can get a request for a waiver. I think that is only fair to those who are at the tail end of the time limit.

The CHAIRMAN. I am not sure that by unanimous consent we could waiver.

Mr. FINDLEY. I ask unanimous consent that any record votes be delayed.

The CHAIRMAN. That is appropriate. First of all, is there any objection to postponing record votes until all members have been considered?

Hearing none, so ordered.

The Chair asks unanimous consent that for all amendments pending the sponsor will be allowed 2 minutes and that two other members be allowed 1 minute each.

I fear that if we don't do this, there will be a lack of understanding about the amendments.

Without objection, it is so ordered.

Mr. de la Garza is recognized for 2 minutes.

Mr DE LA GARZA. Mr. Chairman, my amendment begins with the fiscal year after the 1977 fiscal year.

We would authorize annually along with the appropriation.

On page 12, immediately after line nine, I would insert the following new section 11.

Section 11. Section 407 of such Act is amended by adding a new subsection (d) to read as follows:

(d) There is hereby authorized to be appropriated to carry out the purposes of this Act for each fiscal year beginning with the fiscal year ending September 30, 1978, such sums as may hereafter be authorized annually by the Congress.

Mr. POAGE. If you do not do that you lose control of the programs because the Appropriations Committee can put in or take out anything they want to.

The sole purpose of the de la Garza amendment is to protect the jurisdiction of this committee. I recognize that you can use this as a means of delaying the works of the committee. But normally it would take no time at all.

Normally, unless somebody wants to change the procedure, then it should not be an all-consuming matter.

But if the members of this committee do want to change it, then it seems to me this is an opportunity to do it.

The CHAIRMAN. Are there requests for time in opposition to the amendment? Mr. Sebelius.

Mr. SEBELIUS. Mr. de la Garza, the only thing that concerns me, however, is that every year the deadlines will come up March, April, and May. I think we have overloaded the committee with a lot of things like this.

I would suggest an amendment to do it on a 2-year basis. We would have a handle that we don't have it coming up so often.

I would offer an amendment to change the word annually to biennially.

The CHAIRMAN. The gentleman from Kansas moves to amend the de la Garza amendment by inserting the date 1979, and by adding the word "biennially" rather than "annually" to the amendment. Judge Kelly, are you in opposition to the amendment?

Mr. KELLY. Mr. Chairman, I am in opposition.

One of the key provisions of the committee bill as it now stands is this effort to bring box meat under the purview of the Department of Agriculture in order to expedite and make more economical the flow of meat in interstate commerce.

This is going to result in more income to the farmer and cheaper meat for the consumer.

The unions in this country exercise a certain influence in Government. They are not going to like this at all.

So, all you have to do now is to make it so that something which has been done, which is good for both the farmer and the consumer, can be shot at annually.

Then we are going to have to have a circus every year.

If this bill ever gets through, you will be lucky. If you have to do it every year it's like going through a mine field. Once is a necessity, but two or three times is a folly if you are going back and forth for kicks.

I think that if this bill could be gotten through, then you will be very fortunate; and it should not be subjected to this annual exercise.

The CHAIRMAN. The time of the gentleman from Florida has expired.

The question occurs on the amendment of Mr. Sebelius to the de la Garza amendment.

Does everyone understand the amendment? Mr. Sebelius would strike the annual authorization and replace that requirement with biennial authorization. In other words, we would authorize the program for 2 years instead of 1.

All in favor of the Sebelius amendment to the de la Garza amendment, raise your right hands.

The CLERK. Seventeen.

The CHAIRMAN. Those opposed?

The CLERK. Six.

The CHAIRMAN. There being 17 ayes and 6 nays, the amendment to the amendment is agreed to.

The question now occurs on the de la Garza amendment as amended.

All in favor of the de la Garza amendment as amended, signify by saying aye.

Those opposed?

The ayes appear to have it. The ayes have it. The amendment as amended is agreed to.

Are there other amendments? Mr. McHugh?

Mr. McHugh. I have an amendment which would add a new section 9(a).

I would insert on page 12 of the committee print prior to section 10 a new section 9(a), which I quote as follows:

Section 9(a). The Secretary shall prescribe a form which any registrant under this Act who purchases livestock shall furnish to the seller prior to sale for the purpose of disclosing information concerning the existence of any lien(s) and/or security interest(s) against or in such livestock. The seller shall complete such form and certify by his signature on the form whether or not there is a lien and/or security interest against or in such livestock. In the event that lien(s) and/or security interest(s) exist, the seller shall be required to report on the aforesaid form:

One: The names of the lienholder(s) and/or other security holder(s);

Two: The jurisdiction where the lien(s) and/or security(ies) interest is/are recorded;

Three: The amount secured by such lien(s) and/or security(ies); and

Four: The date of disclosure.

Should a seller knowingly or willfully violate this section, upon conviction he shall be fined not more than $25,000 or imprisoned for not more than 1 year, or both.

In the situation where the sellers of livestock have a mechanic's lien or other secured lien on the livestock, the practice is that purchasers of livestock, let's say those who auction it off, purchase numbers of livestock for that purpose. They have no practical opportunity to check to see whether a security interest has been filed against the livestock.

They go ahead and deal with it and sell it. If indeed there has been a security interest filed, then they are left holding the bag.

What this amendment would do very simply is to direct the secretary to prescribe a simple form which the purchasers of livestock could request the sellers of livestock to fill out, disclosing what security interests, if any, there exist in the livestock.

This would be a protection for the purchasers which in effect, and in practice, they do not have now.

This amendment would also provide a criminal penalty for knowingly or willfully violating this section.

If a seller of livestock knowingly or willfully misrepresented to the purchaser the situation with regard to the livestock and security interests, then he would be subject to a criminal fine or imprisonment up to 1 year or both.

I think that a bill which provides substantial protection for the sellers, and rightfully so, should at least provide this minimal protection for the purchaser of the livestock.

The Chairman. The gentleman from Texas is recognized for 1 minute.

Mr. Poage. I would not oppose this but, as a practical matter, too many of our farmers do not honestly know what the liens cover. They borrow money and the bank takes a lien on everything they have.

They do not know whether the livestock is covered or not. They do not know how to figure it out.

As a matter of fact, it would work a terrible hardship on a great many of the people who have small numbers of cattle. It will not hurt any of the big operators because they will be able to do it.

The man who is selling a few cattle will never be able to fill this out because he does not honestly know.

The CHAIRMAN. Mr. Fithian, are you opposed to the amendment?

Mr. FITHIAN. I am.

The CHAIRMAN. The gentleman is recognized for 1 minute.

Mr. FITHIAN. The general sense is not necessarily bad, but I agree with the gentleman from Texas that the individual who sells one, two, or three head of cattle at the local sale ring, which would be covered by this, would be one more example of a bureaucratic item. We would have to be there to check it off. I would only ask whether there is any major problem in this area. I have not heard of any. In the absence of that, I would oppose it.

Mr. JOHNSON. There is a problem and the gentleman's amendment is a worthwhile one.

Mr. MCHUGH. I raise the amendment because there is an auctioneer in upstate New York, not in my district, who has brought this to my attention. This auctioneer purchases many, many heads of cattle. This is a serious problem for him.

The CHAIRMAN. The time of the gentleman from New York has expired. The two opposition statements having been received on time, and the period for debate has expired.

The question now occurs on the amendment by the gentleman from New York, Mr. McHugh.

Mr. THONE. A parliamentary inquiry.

The CHAIRMAN. State it.

Mr. THONE. If we want to oppose this bad amendment, then the vote is no. Is that correct?

The CHAIRMAN. The gentleman from Nebraska is not so ill-informed.

Of course, the vote is no if you wish to oppose it; and aye, if you wish to support it.

I though the gentleman, when he was reading his amendment, was going to oppose the section 8 requirement.

All in favor of the McHugh amendment will raise their right hands.

The CLERK. Five.

The CHAIRMAN. All opposed?

The CLERK. Sixteen.

The CHAIRMAN. There being 5 ayes and 16 nays, the amendment is not agreed to.

Mr. Moore, do you have an amendment?

Mr. MOORE. Yes, I have a substitute to the bill that does only one thing.

The Clerk is passing out copies now.

I agree with the amendment that Mr. Thornton offered. I did not vote for it because I was studying the date problem caused by slow delivery of the mails.

I think any lien that exists in the law has a time in which the person who holds the lien must perfect it. He must bring it about by filing a notice of suit, or what have you.

This concept of the amendment is good.

The problem I find is that 10 days as final date for receipt of payment brings us to the problem of the U.S. mail.

My substitute would raise that 10 days to 15.

Right now, we are receiving mail from Louisiana sent to my Washington office that has taken a week or 10 days for delivery.

I think you will cause an unnecessary harassment to the packer and producer to require them to start filing notices within a 10 day period.

I think 15 days is a more reasonable period.

The only other thing I do wish to change is the word "perfect" to "preserve" under advice of the counsel of the committee and "claim" to "trust" so the language states, "the seller does not preserve his trust."

We are not talking about claim, but a trust; and preserving that trust.

So, all I do is raise the 10 days to 15 and make the terminology, I think, more appropriate to what we are trying to do.

This is in the interests of the producer and the packer attempting to work that out in time.

The CHAIRMAN. Are there Members who wish to be recognized? Mr. Baldus?

Mr. BALDUS. Would you accept an amendment to your amendment that would give him 10 business days after the seller has received notice that it has been dishonored?

Mr. MOORE. I have no objection but I think we will run into objections from Mr. Thornton. So I would rather not change it that way.

I would rather keep my language as the way to deal with the mail situation.

The CHAIRMAN. Are there Members who wish to speak in opposition to the amendment? Mr. Thornton?

Mr. THORNTON. I only wish to say that I thought that 10 days was reasonable. Accordingly, I cannot vote for the modifications but I must say it is a small change, and I would not object to that modification.

Mr. BERGLAND. Will the gentleman yield?

Mr. THORNTON. Yes.

Mr. BERGLAND. Is the modification changing the word "perfect" to "preserve" and "claim" to "trust" carry a legal connotation that ought to be considered?

Mr. THORNTON. I am concerned about that, but on advice of committee counsel, I hesitate to enter that controversy without research.

I think we should rely upon our counsel.

If they consider that these words are preferable, then I have no objection.

Mr. HOGAN. Mr. Chairman, in response to that, let me say this.

If I understood the thrust of the amendment which was originally offered, it was in effect to preserve the trust.

I think that if the word "claim" is retained in there, you will have to have some language in the report accompanying this bill indicating what the intent of the committee was.

In using the word "claim" instead of "trust,"—if you look at the first part of the amended section as it was offered originally by Congressman Thornton, it did not use the word "trust"—there would be some ambiguity introduced, in my opinion.

I think perhaps by using the word "claim," you introduce some ambiguity into the amendment that would be avoided by using the term "trust." It would be a constructive statutory trust.

Mr. THORNTON. If I may respond, and if I still have a moment, I think that this is a matter which counsel might property address if the committee could instruct counsel to choose suitable words to express the intent of the final bill.

However, it is necessary to say what you are filing. You are filing a notice of a claim. There is no trust instrument.

For that reason, it is necessary, I think, to have some language in the report to express that the trust concept is not a written express trust.

The CHAIRMAN. The time of the gentleman has expired as has all time.

The vote now occurs on the amendment of Mr. Moore. All in favor of the amendment, will signify by saying aye.

Those opposed?

The ayes appear to have it. The ayes have it, and the amendment is agreed to.

Mr. THONE. Mr. Chairman, I have a simple, technical amendment as suggested by staff.

Section 6 of the bill authorizes damages for violation of the act and for orders of the Secretary made pursuant thereto. The key provisions of section 6 is under any provisions of the act. We thought that was too broad. My amendment yesterday restricted that relating to purchase.

Staff counsel tells me that we went too far. They say that we will want to amend that language to say "not only relating to purchase but relating to purchase, sale or handling."

That is the thrust of the amendment which I offer at this time.

The CHAIRMAN. Is there any objection to the amendment?

If not, all in favor of the amendment signify by saying aye.

Those opposed?

The ayes have it, and the amendment is agreed to.

Are there other amendments to the bill?

Are there any technical amendments.

Mr. IMHOF. There are two.

I will take the second one first in the interest of expediency. On page 12 of the bill, in the first sentence, what is now section 10 there appears a separability clause, section 408 of the statute already contains such a clause. The staff suggests then that the first sentence in section 10 be deleted.

The CHAIRMAN. Is there any objection to the proposed technical amendment?

All in favor of the technical amendment, will signify by saying aye.

Is there opposition?

The ayes have it, and the technical amendment is agreed to.

Mr. IMHOF. The second technical amendment, Mr. Chairman, is the subsection (b) of the trust provision. I believe it has been passed around. It is entitled technical amendments. It is on page 11 of the bill.

It is on the second line. We would substitute for the phrase "the sellers" the phrase "all unpaid cash sellers."

In the next line we would strike the words "for such livestock." And in the next line, line 4, we would insert the word "unpaid" immediately before the word "sellers."

The CHAIRMAN. Is there any objection to the technical amendment?

If not, all those in favor of the technical amendment, signify by saying aye, those opposed, nay.

The second technical amendent is agreed to.

Are there other amendments to the bill?

If not, is there a motion to report the bill?

Mr. POAGE. May I raise a question before we move on.

It seems to me that we are at a point where we can pass the bill.

There are a great many amendments here. If we bring this bill to the floor with all these amendments, we are going to prejudice everybody in the House who is against it. I wonder if it would not be a good idea to prepare a clean bill and let us vote on a clean bill here about this Friday.

The CHAIRMAN. Although the House is to be in session on Friday, we have no business scheduled before the committee at that time.

Is the gentleman suggesting a meeting of the committee at 10 o'clock Friday morning?

Mr. POAGE. We will never get a quorum.

We cannot introduce one today, can we?

The CHAIRMAN. We can introduce one.

We could probably have the staff finish today.

Mr. BOB. We could finish putting it together by the end of the day.

Mr. POAGE. In time for this afternoon?

Mr. BOB. I am not certain that we could do it before the close of business in the House this afternoon. That is where the trouble lies.

Another possibility would be to adopt an amendment in the nature of a substitute which strikes everything after the enacting clause and then set out fresh.

Mr. THONE. I would so move.

Mr. BOB. Then we could go before the Rules Committee and ask that the amendment in the nature of a substitute be considered as the original text.

The CHAIRMAN. Mr. Poage moves that all after the enacting clause be stricken and the single amendment incorporating the text of the bill as amended be adopted.

All those in favor of the motion by the gentleman from Texas, Mr. Poage, signify by saying aye.

Those opposed?

The motion is agreed to.

Mr. POAGE. I move that we report the bill with a recommendation that it be passed.

The CHAIRMAN. The gentleman from Texas moves that the bill H.R. 8410 as amended be reported to the House with the recommendation that it be passed.

The gentleman from Nebraska asks for the ayes and nays on that motion.

All in favor will, when their names are called, respond aye; and those opposed will respond no.

The Clerk will call the roll.

[The rollcall follows:]

Ayes Representatives Poage, Vigorito, Jones of North Carolina, Jones of Tennessee, Bergland, Brown (by proxy), Bowen, Litton, Breckinridge (by proxy), Nolan, Baldus, Krebs, Harkin, Hightower, Bedell, McHugh, English (by proxy), Fithian, Jenrette (by proxy), Thornton, Wampler (by proxy), Sebelius, Findley, Thone, Symms, Johnson, Madigan (by proxy), Jeffords, Kelly, Grassley (by proxy), Hagedorn, Moore, Foley, de la Garza, Melcher (by proxy).

Nays Representatives Mathis (by proxy), Richmond.

The CHAIRMAN. The Clerk will report the results of the roll call.

The CLERK. Thirty-five ayes; two nays.

Mr. NOLAN. May I be recorded as having been present and voted aye.

The CLERK. Yes.

The CHAIRMAN. The Clerk will disregard Mr. Nolan's proxy vote and substitute for it his vote as given in committee. The Clerk will report the result.

The CLERK. Thirty-five ayes; two nays.

The CHAIRMAN. The Clerk will report the result of those Members voting other than by proxy.

The CLERK. Twenty-seven Members were present and voting.

The CHAIRMAN. There being 35 ayes and 2 nays, and 27 Members present and voting, the motion is agreed to and will be reported favorably.

The record will show that a quorum is present.

Before the committee adjourns, I would like to recognize the gentleman from Illinois, Mr. Findley.

Mr. FINDLEY. I would like to make sure that members of the committee are aware of a very unusual protective device which the European community has imposed on imports of cottonseed meal and soybean meal and other vegetable protein products.

This has been imposed effective April 1 to last the balance of the year.

It is a device that they are using to try to unload some of their surplus nonfat dried milk.

It is clearly a violation of the GATT. Unfortunately, up to now the administration has not made a very vigorous protest against it.

They originally planned to send a third- or fourth-level bureaucrat to Brussels to enter a protest.

I just learned today, that this afternoon the chief agricultural trade negotiator for the executive branch is flying to Brussels for the purpose of lodging a very strong protest against this measure.

Many of you have already cosponsored a resolution which calls upon the President to protest the communities action and also calls upon the President, if the protest is not heeded, and if the restricting device is not dropped, to seek compensation under the rules of GATT for the damage caused by this new policy.

Mr. Yeutter would like to know the names of any Members of the House and Senate who have cosponsored this resolution so that he can take this information with him to support his cause.

In the Senate, Senators Dole, Humphrey, Curtis, and a number of others, have already cosponsored.

I have perhaps ten members of this committee.

I think it would underscore and support the position of the executive branch if they could have a good majority of the Agriculture Committee on the line and in support of the protest.

If any of you would like to be identified with it, I have the text of the resolution with me.

But you should let me know by 2 o'clock today in order to enable me to get the information to Mr. Yeutter by the time his plane leaves.

Thank you, Mr. Chairman.

The CHAIRMAN. The Chair would ask unanimous consent that the staff be authorized to make purely grammatical, syntactical or other clerical adjustments in the text of the bill in preparation of the bill being reported.

Without objection, so ordered. Mr. Hogan do you wish to say something?

Mr. HOGAN. Mr. Thornton has called my attention to one word at the bottom of his amendment of Mr. Moore's amendment changing the word "claim" to "notice." I think it is a change that the committee would wish to adopt.

The CHAIRMAN. Mr. Thornton asks unanimous consent that the word "claim" be stricken and that the word "notice" be substituted therefor.

Is there objection?

Hearing none, so ordered.

Is there any other business to come before the committee?

Mr. KREBS. What about the cosponsors?

The CHAIRMAN. That will not be necessary now.

The Committee on Agriculture stands in recess until 1:30 this afternoon for further hearings on food stamps.

[Whereupon, at 12 p.m., the hearing was recessed.]

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